

THE COURT: Members of the jury, we're ready to proceed now. State's Case in Chief, we're ready for witness #14. Ms. Foulston.

MS. FOULSTON: Witness needs to be sworn Your Honor.

Q: Do you swear that the testimony you are about to give in the case now in front of you is true, the whole truth, and nothing but the truth, so help you God?

A: I do.

MRS FOULSTON:

Q: Good afternoon.

A: (Inaudible).

Q: Would you please state your name for the court?

A: H. G*****.

Q: Ms. G*****, I'm going to ask you to speak loudly so that we can hear you. Can you do that, please?

A: Yes.

Q: Ms. G*****, in the evening hours of December 14th of the year 2000, do you remember what your activities were on that day, and in the early morning hours following?

A: I do.

Q: I want to direct your attention to the evening hours at approximately seven or eight o'clock in the evening of that December the 14th, do you remember that time period?

A: I do.

Q: Can you tell me what your activities were?

A: I had baked a cheesecake, graded some papers, and was headed over to my boyfriend's house.

Q: Your boyfriend would have been...

A: Jason Befort.

Q: And where did he live?

A: He lived at 12727 Birchwood.

Q: What city would that be in?

A: Wichita.

Q: What county?

A: Sedgwick.

Q: And what state?

A: Kansas.

Q: You said that you were grading some papers, is that right?

A: Correct.

Q: Was that in connection with your occupation at the time?

A: Yes.

Q: And were you a schoolteacher?

A: Yes.

Q: So after you'd baked the cheesecake and graded some papers you headed over to Mr. Befort's residence. And I believe you told us the address of 12727 Birchwood, is that right?

A: Correct.

Q: That particular location, did Mr. Befort live there alone or with others?

A: He had two other roommates.

Q: What were their names?

A: Brad Heyka and Aaron Sander.

Q: Can you tell us what kind of residence this was that they had?

A: It's a triplex.

Q: What does that mean?

A: There's three living areas connected.

Q: And where was 12727 Birchwood in relation to the other two living areas in that triplex?

A: Its in the middle.

Q: So this particular residence would be straight on in the middle of two others attached on the sides, is that right?

A: Correct.

Q: Would those houses have adjoining walls to them?

A: Yes.

Q; In some parts of the house?

A: Yes.

Q: Do you know how long Mr. Befort had lived there?

A: He moved in in June of '98.

Q: And at that time in June of '98 were you and mr. befort seeing a lot of each other, keeping company?

A: Yes.

Q: So did you have the opportunity to be at the residence at Birchwood on more than one occasion?

A: Yes.

Q: In fact, were you a frequent visitor at that location?

A: Yes.

Q: And when... so you are familiar with the layout of the property and what the rooms were like in that location, is that right?

A: Very.

Q: Can you give me a brief tour of the residence, when you walked in or got to the front door, where would you be?

A: There's a hallway, and to the left, or the east is a doorway. And there's like a little dining area connected to the kitchen, and then if you continue down the hallway there's a living room with a separate area for a dining room. There's a master bedroom and bathroom at the back of the house, and then if you continued around the corner would have been Jason's bedroom, and then a separate bathroom.

Q: Now in that first floor in particular, the dining room, was it used as a dining room?

A: There wasn't anything in it.

Q: No furniture?

A: No, there were some boxes.

Q: And the living room, was that furnished?

A: There was a couch, and a chair, and a lamp and a coffee table.

Q: Were there any electronic equipment in that area?

A: There's a entertainment center on the north wall of the living room.

Q: And you indicated that Mr. Sander had a bedroom, the master bedroom, is that correct?

A: Correct.

Q: Did that have its own bathroom attached to it?

A: Yes.

Q: Had you been in there to observe what that room looked like and bathroom?

A: Yes, I have.

Q: Can you briefly describe it?

A: It's a long rectangular bathroom. It has a double sink, then like a Jacuzzi or tub, and a large walk-in closet. And then there's a separate, like, door, where there's a toilet.

Q: And in this bedroom were there any kind of doors that left that residence to go outside?

A: Yeah, there's the, there's a double door.

Q: So there would be a sliding glass door in that master bedroom?

A: Correct.

Q: And that would have been Aaron's room, is that correct?

A: Correct.

Q: In the living room area. Were there any ways to get out of the house from that location?

A: There was the back sliding glass door.

Q: And where did that go to?

A: There's kind of an overhang, with a little cement patio. It goes down into the yard and then there's a pond right past that.

Q: You stated that your boyfriend Mr. Befort also had a bedroom and a bathroom upstairs, or just a bedroom.

A: A bedroom and a bathroom (inaudible).

Q: They were separated from each other, is that right?

A: Correct.

Q: In relation to the front of the house, where was the bedroom located?

A: Its at the front of the house next to, like, the front porch is right here, and his room's here, and then the kitchen's here.

Q: Indicating they are similar or parallel in line?

A: Right.

Q: And would that be facing a northerly direction?

A: Yes.

Q: How would you get into this room, what kind of access did it have?

A: It has two wooden doors that close, like, its either open them singly or open them together.

Q: And the bathroom you stated was apart from the bedroom area, is that right?

A: Correct.

Q: And where would that be located?

A: To the west of his bedroom, there's a hallway in between.

Q: You stated that he lived together with Mr. Sander as well as Brad Heyka, is that correct?

A: Correct.

Q: Where were Brad's living accommodations?

A: Downstairs.

Q: And what was downstairs?

A: There was a living room, storage area, actually there were two storage areas, a bathroom and a bedroom.

Q: And were there types of equipment that belonged to Brad that would be located there as well?

A: He had, there was a TV downstairs, there was a computer desk, there was a couple of recliners and a couple couches.

Q: During the time that Mr. Befort was living at the residence on Birchwood, would you be there when other friends and acquaintances might come by?

A: Yes.

Q: And so, it was not just the three of them, there would be other people that would come in and out of the home, is that right?

A: Correct.

Q: The location at Birchwood...when you would leave for there from your home, when you get to the approximate area where Birchwood would be, can you describe what street you might be taking to get to that house?

A: I lived south, so I would take Pawnee over to Greenwich, up to 13th, and then take 13th to the entrance of Cobblestone, what is... I believe its Davin, and then down, and then that kind of comes into Birchwood.

Q: Now, Davin Street, would that be to the west of 127th?

A: Yes.

Q: So you would enter into the Birchwood area by the entry on Davin or the entry on 127th, is that correct?

A: Correct.

Q; and the one on Davin, what kind of road was that?

A: Its just, you come in from 13th Street, and you're headed north, and then it curves around, to the east.

Q: And was that a direction that you learned to come into that residence rather than 127th?

A: I would go both, but I used the other one more frequently.

Q: When you decided to visit the residence on December 14 in the evening, did you take any pets with you?

A: I took my, well, Jason and my dog.

Q: And what kind of dog was that?

A: A Schnauzer.

Q: And was that male or female?

A: Female.

Q: And did she have a name?

A: Nikki.

Q: So was she also a visitor there at that residence?

A: Yes, she was.

Q: At when she was at the residence, where did she normally stay?

A: She would stay in the bedroom.

Q: Were there any particular circumstances regarding your dog Nikki and strangers?

A: Yeah, she didn't like them.

Q: And would she take any kind of... how would you know she didn't like them.

A: Bark, growl.

Q: And she was a little Schnauzer.

A: Yeah, she wasn't very nice.

Q: She wasn't very nice. Okay. But she did like Jason, is that right?

A: She liked Jason a lot.

Q: That evening when you went there do you remember what kind of vehicle you were driving?

A: I owned a 1992 red Toyota Paseo.

Q: And when you went to the residence, did you expect to find Jason there at that time?

A: No. he was at practice.

Q: What kind of practice would that have been?

A: He coached JV basketball.

Q: And did you know where he was that evening?

A: He was at basketball practice.

Q: When he was at practice, what time would he normally arrive back to the residence?

A: It depended. He had freshman practice after his regular practice that day, so he would have been doing double.

Q: Where was Jason employed?

A: Augusta High School.

Q: So he was a coach, is that correct?

A: Correct.

Q: Did he have any other duties that he performed there?

A: Um...

Q: Did he teach?

A: Yes.

Q: What did he teach?

A: Science.

Q: As you got to the residence, do you know what time you arrived , the approximate hour?

A: It was about 8:30.

Q: And what did you do when you got in the area of the Birchwood home?

A: I pulled in the driveway, got out. Nikki went to the bathroom, we went inside, I put the cheesecake in the fridge, and went and put my things in Jason's room.

Q: Can you tell me what activities occurred and who might have been present when you arrived.

A: Aaron and Brad were both there.

Q: Did anyone else arrive at the house/

A: Heather arrived later.

Q: Would that be Heather Muller?

A: Yes.

Q: And who did you know her to be?

A: She dated Aaron.

Q: Had you had a great deal of contact with her prior to December 14?

A: I had met her three or four times.

Q: And was there anyone else that was expected to come to the residence other than Jason, on that evening?

A: No.

Q: So at 8:30 or thereabouts there was you, Brad, Aaron, and Heather Muller, is that correct?

A: She came shortly after I did.

Q: Did you have any opportunity to look and see where she might have parked her car?

A: No.

Q: And your vehicle was parked...

A: In the driveway.

Q: Do you remember what the weather conditions were on the evening hours when you first went over to Birchwood?

A: Snowy, icy, cold.

Q: And how were you dressed when you first went over to the Birchwood residence?

A: Casually.

Q: Did you have any winter clothing on?

A: Yeah, like sweats, something...

Q: Did you have any coat or clothing overcoat?

A: I had a, a jacket on. I had a winter coat.

Q: So it was cold enough that you were required to wear a coat, is that right?

A: Correct.

Q: Can you tell me what happened after Jason got home and the approximate time?

A: He got home shortly after nine, came in, said hi, and then went downstairs and talked to Brad.

Q: And what had you been doing within this time, this timeframe before Jason had returned.

A: I was grading papers and watching ER.

Q: And at the time were you employed as a teacher?

A: Yes.

Q: What grade did you teach?

A: 5th.

Q: Do you remember how long it was before you saw Jason again?

A: I didn't go downstairs until after ER was over, so 10:00.

Q: ER would be a television show.

A: Yes.

Q: And what time would that have been?

A: It's over... it was from 9:00 to 10:00.

Q: And was this a show you would regularly watch on Thursday night?

A: Yeah.

Q: After the show completed, what did you do?

A: I went downstairs, talked to Jason for a little bit. He hadn't eaten dinner, he didn't want to go upstairs and bother Aaron and Heather because they were making dinner in the kitchen, so I went upstairs and made him a sandwich and took it back downstairs.

Q: When Aaron and Heather were in the kitchen area, you said they were making dinner, is that right?

A: Correct.

Q: And what did you observe going on in the kitchen?

A: They were both sitting at the table while I was standing at the counter.

Q: And was it in your nature respect their privacy or to listen in to their conversations?

A: Yeah, they, we talked a little bit. They asked me if I wanted anything. They were... I think they were eating soup, and I just made a sandwich and went back downstairs.

Q: Did you notice whether or not they had any beverages to drink?

A: They were drinking some wine, I believe it was red wine.

Q: And that would have been in the kitchen area, is that correct?

A: Correct.

Q: So when you made the sandwich and went back downstairs, that would have been sometime after 10 pm, is that right?

A: Correct.

Q: And then did you remain downstairs for any period of time?

A: In a little bit, when the news was done, I went upstairs.

Q: Would time would that have been?

A: 10:30.

Q: When you say you went upstairs again, what was your, what direction were you going, where were you going?

A: I was going to bed, so I went and washed my face and got ready for bed.

Q: And your dog Nikki, where would she have been?

A: She, I believe she came upstairs with me.

Q: At that time.

A: At that time.

Q: All right, so she stayed with Brad, with Jason, on some occasions, and then followed you as well.

A: Correct.

Q: Did she enter into the bedroom with you?

A: Yes.

Q: Do you recall about how long it might have been until you saw Jason come back upstairs for bed?

A: Maybe 10, 15 minutes.

Q: And what was he doing at that time?

A: He was getting ready for bed, fixing his bag to take the next day for practice.

Q: What kind of bag might that have been?

A: Black duffle bag.

Q: What did he need for practice, what would he put in it/

A: He had like his stopwatch, and a whistle. And his sweatpants, like Adidas pants, and a shirt, and shorts.

Q: So there would be some of the clothing items and things he would utilize for coaching activities, is that correct?

A: Correct.

Q: And after he had done that, do you recall whether or not he changed his clothing to get ready for bed?

A: Yes.

Q: What did he take on or put off, put on or take off?

A: I believe he had on like his shirt and shorts from coaching, so he just like took off his T-shirt and put on a different shirt, and put on like boxers or, and got, went and brushed his teeth and did all that.

Q: And do you remember what you were wearing when you went to bed that evening?

A: I had on a T-shirt and a pair of shorts and had taken off my shorts when I went to bed.

Q: Did you have underclothes, or undergarments on?

A: I had underwear on.

Q: Once you had determined you were going to retire for the night, did you note what time it might have been?

A: By the time I got ready, it was probably 10:45 when I got into bed.

Q: And did anything keep Jason from staying in the room at that time?

A: When he came up and he brushed his teeth, he went around and turned off all the lights, and locked the door and like shut down the upstairs.

Q: Was that something Jason would do on a regular basis?

A: Yeah.

Q: Did he have a routine that he would follow?

A: Yeah, he just made sure everything was turned off and ready to go to bed for the evening.

Q: Was there some reason that he would have turned off outside lighting?

A: He has a window that's right by the front porch, where the light shines in, and so he can't sleep if its on.

Q: And on that particular evening was that one of the things that he turned off?

A: Yes.

Q: And that would be so it didn't shed light into your room, is that right?

A: Right.

Q: Normally if the light was on, and you were in the room, you would get the glow through the glass, is that correct?

A: Correct.

Q: Enough to disturb your sleep.

A: Correct.

Q: And those other lights you indicated he had turned off, where would those have been?

A: There was a light in the kitchen, there were lights by the wet bar, there were lights in the living room, in the hallway, his bathroom light, he made sure all those were off before.

Q: How would those lights be fixed, to the property rather than being lamps, standing lamps?

A: They were both.

Q: After he had completed that activity of shutting down the house, did he then return to bed?

A: Yes.

Q: And do you recall whether you had any words or discussion at that time?

A: We might have. Not until the lights came on do I remember what we were talking about.

Q: All right, at that time, you've told us you were teaching. What time did you normally get up for school the next day?

A: If I stayed at his house, I got up at about 5:20.

Q: And you would not always stay at his residence, is that correct?

A: Correct.

Q: So you were part time, part of the time at your own apartment.

A: Right.

Q: And when you got up at 5:20 in the morning, you needed to get to sleep the night before, is that correct?

A: Right.

Q: What was your normal bedtime?

A: 10, 10:30.

Q: And at this time, were you asleep, or ready to go to sleep?

A: Yes.

Q: All right. What happened at that point?

A: The porch light came on, and Jason said 'Don't tell me I have to get up and turn those lights off again.' I sat up, looked at the clock, because it was... I saw the 11, I'm not sure what the minutes were, but... I was annoyed because I wasn't asleep, he was annoyed because he had just turned off all the lights, and he was thinking that he was going to have to get up, get out of bed, go turn them off again, so he could go to sleep.

Q: Now you said that you could see by the clock the hour was 11 but couldn't see the minutes, is that correct?

A: Correct.

Q: Was there a reason for that?

A: Jason was on that side of the bed.

Q: And was this a smaller clock?

A: Yeah, it was like one of those flat alarm clocks.

Q: So at least you know the time was somewhere after, or 11 or after, is that right?

A: Correct.

Q: Can you tell me what happened then?

A: We were laying, I was actually laying face down on the bed, and I was on the north side of the bed, and his door to his bedroom burst open...

Q: Had you heard any sounds before that?

A: When the light came on, I had heard some voices, and I knew it was Aaron, and was thinking it was he and Heather having a conversation, but I didn't know the other voice. I knew it was Aaron's voice, but I didn't know who he was talking to.

Q: And this was prior to the door coming open in Jason's bedroom, is that correct?

A: Correct.

Q: Now you told us that there were two doors in his bedroom, you could open one or the other. Do you recall that evening when you went to sleep if they both were closed or what condition they were in?

A: They were both closed. He kept one door closed because it had one of those latches that latches down, into the floor.

Q: Was it stationary?

A: No, it opened.

Q: It opened.

A: It could, you can open both of them, but it also has the latch that goes into the door, and then it has the doorknob and you kind of pull it shut together.

Q: Okay, I understand. But that was normally closed and then you closed the second door, is that correct?

A: Right.

Q: So when the door opened, how many opened?

A: I don't remember if it was one or both.

Q: Okay. Please describe for us what happened when those doors opened in Jason's bedroom, shortly after 11 on December 14.

A: I first looked up and wasn't thinking anything about it so I thought that it was Aaron and just kind of put my head back down on the pillow, just to go back to bed, thought that Jason would talk to him, whatever. And, it wasn't. And Jason kind of screamed, and the covers were kind of ripped off by the person coming in from the door.

Q: Did that cause you to look to see what was occurring?

A: Yes.

Q: And what did you see?

A: There was a tall silhouette with a little bit of light behind him, standing in in the doorway, and he kinda yanked the covers off the bed and said something, but I'm not sure what he said.

Q: How many people did you see at that time?

A: One.

Q: And you'd indicated that you'd heard Aaron's voice, prior to the door coming open. Did you see Aaron at that point in time?

A: No.

Q: Then what happened?

A: There was a second person, male, black male, that brought Aaron in, kind of by the back of his shirt, and threw him on the bed.

Q: And what words, if anything, do you recall were spoken?

A: They both kinda started asking who else was in the house, was there anybody else. We both then said that Brad was downstairs, that there was a person downstairs. They went downstairs. The stairs, you could hear them kinda going down the stairs, and then you heard Brad scream, and then he was brought upstairs.

Q: I'm going to stop you for a minute and back up. You said that when it was identified that Brad Heyka was living in the basement area, you said "they" went to get him. Did you know how many people left that room, at that time?

A: Just one.

Q: And was there any other person in the room with you at that time?

A: Yes, there was one person who stayed, and one person who went downstairs and got Brad.

Q: When you heard Brad scream and he was brought back upstairs, do you know where he was placed?

A: He was placed on the floor, at the foot of the bed.

Q: And how did that happen?

A: Just by direction.

Q: Was he told to get on the floor?

A: Yes.

Q: Where was Aaron at that time?

A: Aaron was laying on the end of the bed, like at our feet, perpendicular.

Q: And did you notice whether or not the individual who had gone downstairs returned with anything that you observed?

A: He came back with a golf club.

Q: And how were you able to observe that?

A: I saw it.

Q: What were the conditions at the time regarding the lights in the bedroom?

A: The lights in the bedroom weren't on, the light on the porch was on, and there was some lighting from the living room. I'm not sure what light was on.

Q: Were you able to distinguish between the two individuals that had just intruded upon this residence?

A: Not at that time.

Q: Were you able to identify by size or weight at that time?

A: No.

Q: I believe you said that there was a silhouette of an individual, correct/

A: Correct.

Q: Were you able to distinguish the race of either of those persons at that time?

A: They were both black males.

Q: Were you able to note whether or not they were armed?

A: Yes, they were both armed.

Q: And how were you able to determine that?

A: When the one gestured for us to get on the bed, he was gesturing and you could see that he had a weapon in his hand.

Q: Now, I believe you told me that you were sitting on the bed or in the bed, facing what would be a southerly direction, is that right?

A: Correct.

Q: And in that, behind that would be the living room area, is that right?

A: Correct.

Q: And, the silhouette that you saw allowed you to see the shape but not the individual features at that time.

A: Correct.

Q: After Brad had been directed to the floor, was there any conversation or demands by those individuals, one or either.

A: When he was coming back they were still asking if there was anybody else in the house, and then Aaron indicated that his girlfriend was in the other room.

Q: And then what happened?

A: They went and they brought Heather back to Jason's room.

Q: One, or both?

A: One.

Q: So one individual went...

A: And one stayed.

Q: And one stayed. The return of Heather to that area, do you recall how that happened? What happened when she got in the room?

A: They directed her to the floor, and she laid on the floor next to Brad.

Q: Do you remember how she was clothed at that time?

A: She was fully clothed.

Q: Do you remember what she might have been wearing?

A: She had on a sweater with a shirt under it and jeans and boots.

Q: Now when you say that she had jeans on, do you mean that she had blue jeans on?

A: No, they were brown I believe.

Q: Okay, so you call jeans something other than denim blue?

A: Yes.

Q: Do you have that...

A: Just denim jeans, as opposed to khaki.

Q: Okay, thank you.

THE COURT: Do you want to take your recess at this time?

MS. FOULSTON: Yes, Your Honor.

(Recess)

THE COURT: Members of the jury, continuing on. Ms. Foulston.

MS. FOULSTON: Thank you, Your Honor.

Q: Miss G****, when we last left off before the break this afternoon, you had been telling us about all the individuals in the residence being brought into Jason's bedroom, is that correct?

Q: Correct.

A: When all of those individuals were there, were there any statements made during this time by the two intruders?

Q: They wanted to know if there were any phones, where the phones were. Aaron said that he had already told them where the phone was. Jason didn't have one besides his cell phone. And they were looking around the house for a safe. They were shouting "Where's the safe, in a house this "f"ing nice there's got to be a safe. We told them there wasn't one. They then directed everybody to get undressed. Everybody took off, we kinda went one by one, everybody just took off what they had on, and we continued to lay on the bed.

Q: and at this point all of you were in total undress, is that correct?

A: Correct.

Q: And was your dog still in the room at that time?

A: Yes, she was growling, had her teeth bared, and they said somebody better shut that dog up, or we'll shoot it. And then , they had Heather and I come out of the bedroom. I think there was some conversation about... between the two of them about, you know, "It'd be cool to watch," you know, "Yeah let's have two girls..." That kind of thing.

Q: Let me stop you for a second. When you were, you said you were removed or you and Heather were taken out of the bedroom. How did that happen. How did you know to go?

A: They just kind of pointed, and said like you and you, you two.

Q: And what happened then?

A: We went out to an area right outside of Jason's bedroom doors, where there's like a little sink, wet bar area, and they told us to perform oral sex, and we complied. I believe their exact words were "Suck that pussy." I, I did that to Heather first, and then she did that back. And then, they wanted to see, they kinda indicated somehow, I can't remember, that, to digitally penetrate one another, and we did that. And then, Brad came out and they told us, actually told Brad and me, we had sex, but he didn't have an erection, so they were angry about that. And then they had him stop, and had Jason come out and he did the same thing, until they stopped him, they said something like, "That's our girl" or "That's his girl, don't let him do it with her. And then he went back and Aaron came out. He kinda refused a little bit, and they hit him on the back of the head, and after that I went back into the closet.

Q: At that time, when you were first taken out, you indicated that it was in front of the wet bar area, is that right?

A: Correct.

Q: And you had told us earlier that the door to Jason's bedroom had been opened initially to admit those two individuals, is that correct?

A: Correct.

Q: Can you describe for us the demeanor, or the way these two intruders were acting at this time?

A: They were demanding. They were not irrational, they were just shouting and just very demanding.

Q: And what did that lead you to believe at that time?

A: By the fact that they had guns, we were under the impression they would probably shoot us.

Q: And were you attempting to do what was asked of you?

A: Yeah, you just kind of comply.

Q: You said that the incident in front of the wet bar initiated with both you and Heather Muller, is that right?

A: Correct.

Q: You said that you were required to perform oral sex, and that you went first.

A: Correct.

Q: For the jury, can you explain when we talk about oral sex, what part of your body touched what part of Heather's body.

A: It would be my mouth to her vagina.

Q: And when Heather was required to perform oral sex, what part of your body did she touch with her body.

A: It would be her mouth to my vagina.

Q: When this was happening, you stated that words were spoken by the individuals, or by one individual at least, is that right?

A: Correct.

Q: Do you recall how many people were then observing at the time this sexual activity was required of you and Heather?

A: Both.

Q: And what were they doing, what were they saying.

A: "Suck that pussy." When it was more of the digital, it was "Do it deeper." I remember they kinda, while Heather was performing oral sex, kinda hit my knee so that hey could get a better view.

Q: And were they in direct proximity to both you and to Heather?

A: Yes.

Q: And was the door to the bedroom open, if you recall?

A: I don't recall. At least one was, I don't know if they both were.

Q: At that time, had the remaining people in the home, Brad and Aaron and Jason, had they been left in the bedroom proper at that time?

A: Yes.

Q: When you talk about digital penetration, can you tell me what part of your body touched what part of Heather's body?

A: It was actually a simultaneous action, at the same time.

Q: Can you explain what was happening at that time?

A: She was digitally penetrating me while I was doing the same to her.

Q: Where did she place her fingers?

A: In my vagina.

Q: Where did you place your fingers?

A: In hers.

Q: Were there any words spoken by Heather at this time?

A: I don't believe so.

Q: You said that this went for a period of time. How long would this have been?

A: Maybe 5 minutes, 5 or 10 minutes.

Q: At the time that you were doing this, this activity between you and Heather, what direction would your body have been placed?

A: It was parallel to the doors to Jason's room, my head would have been to the west.

Q: So your feet would have been to the wet bar area, is that correct?

A: Correct.

Q: And were you on your front or on your back/

A: On my back, during part of it.

Q: And Heather?

A: She would also have been on her back during part of it.

Q: After the acts that were required of you and heather, you stated that at some point Brad Heyka was taken from the room, is that correct?

A: Correct.

Q: And at that time, did that leave you and Heather both there together with Brad?

A: I believe so, I remember someone being very close to me.

Q: And at the time that this person was close to you, what was happening to you physically?

A: Brad was on top of me, trying to comply to the demand to have sex.

Q: What were those demands?

A: For him to have sexual intercourse with me.

Q: Were those the words that were spoken?

A: I don't recall.

Q: Was Brad able to have sexual intercourse with you?

A: As well as you can. There was penetration, but he didn't have an erection.

Q: Did his penis penetrate your vagina?

A: Yes.

Q: Was there a time, a period of time, in which that continued, and for how long?

A: A few minutes.

Q: And At the time when Brad was having sexual relations with you, you stated that you felt someone close to you is that correct?

A: Correct.

Q: And who did you assume that to be at that time?

A: Heather.

Q: Were you able to assume that because you knew where the other two intruders were?

A: yes, the person close to me was over here, when they had been down, kinda by my feet to the southeast, basically southeast of where I was.

Q: So, they're over by the wet bar?

A: I'm lying with my feet to the wet bar, and they're more, kinda, just a few feet into the living... there's the wet bar here, and then there's a few feet, it just goes up directly into the living room.

Q: Did Brad make any complaints to them with regard to this action?

A: No.

Q: Do you recall at that time, or at any time, in any period, that Brad was touched in any way other than by the sexual activity?

A: I don't recall.

Q: You stated that he next person to be brought out would then be...

A: Jason.

Q: Jason Befort. Do you recall whether or not you felt the presence of Heather Muller still there at that time, or did you know anything different?

A: I believe she was still there, but I'm not sure.

Q: When Jason was forced to have intercourse with you, could you tell whether or not he was able to penetrate you with his penis?

A: There was penetration, he didn't have an erection.

Q: Was he able to conclude sexual intercourse at that time?

A: No.

Q: Then the third person to be brought out would have been...

A: Was Aaron.

Q: And I believe you had stated that a Aaron had made some refusal, is that right?

A: Correct.

Q: Can you tell me to the best of your recollection what Aaron said?

A: Just no, I, you know, I don't want to, I don't want to do this, and he was struck, and then complied.

Q: When you said that Aaron refused, did that bring any commentary from the two intruders?

A: I don't remember exactly the words, they were angry that he wasn't doing what they had asked him to do

. Q: And did they verbally demonstrate this anger?

A: Yes.

Q: Was this discussion a continuous attitude that they took?

A: Yeah, if you didn't do what they wanted it was, you know, later on that evening, you know, there was conversation about "Get an erection," you have by this certain time to get that done or I'll pop you, shoot you, I can't remember the exact words.

Q: So the conversation by these two individuals continued throughout the time that all these activities were going on, is that right?

A: Correct.

Q: In other words, they weren't silent observers.

A: No.

Q: When Aaron came out you said that he was hit.

A: Correct.

Q: Could you tell where he was hit and with what?

A: I believe he was hit in the back of the head with something hard. He had cried out, to where you could tell he was in pain.

Q: At the time when these activities were going on with you and Heather, were your eyes covered in any manner?

A: Partially.

Q: And could you describe the way that happened?

A: One of them had thrown a shirt or some piece of clothing, I had it partially over my face.

Q: Were you still able to see the area close or near to where you were?

A: Yeah, it was, I was laying on my back, so you couldn't see directly above you, but you could kinda see out from underneath it, like I could see the area by my feet.

Q: And from this position, were you able to see certain things that were then happening?

A: Yes.

Q: And did you have that covering partially on your face during the time when Brad was required to have sexual intercourse with you?

A: Yes.

Q: And did this continue through the period of time that you're describing?

A: Yes.

Q: So did you continue to try and look and see and observe?

A: Yes.

Q: And what were the things that you were observing at that time?

A: I could see my feet, I could tell who was actually on top of me, I could see like the bottom kinda cabinets underneath the sink, and you could see a little bit over, like, off to my feet into the living room area.

Q: After Aaron had been hit, did he continue to attempt sexual intercourse?

A: Yes.

Q: And was he able to penetrate in any way your vagina with his penis?

A: Yes.

Q: How did that happen? He was not able to have an erection, is that correct?

A: Correct.

Q: What, what happened?

A: He was on top of me, he actually didn't try until he was struck, and then complied with the orders he had been given.

Q: Do you know whether or not he reached, completed the act of sexual intercourse?

A: No,

Q: No he didn't, or no you don't know?

A: No, he did not.

Q: When I say that I mean to inquire as to whether or not, if you know, there was an ejaculation.

A: No, there wasn't.

Q: By Brad?

A: There wasn't an ejaculation by Brad, Jason, or Aaron.

Q: Was there any name calling?

A: I was called "shorty" at a later period of time.

Q: Now, after Aaron had completed the sexual activity with you, what happened then?

A: I went back into the closet, and I believe Aaron was forced to have sex with Heather.

Q: Backing, going back, at that time you were not aware whether Heather was still in that area or not, is that correct?

A: Correct.

Q: And...

A: She was in the closet, and she came back out when I went back in.

Q: Can you tell me what you mean by they were in the closet, what had caused that to happen?

A: We were ordered to sit in the closet. Jason had a closet in his bedroom.

Q: Was there clothing or other items in that closet?

A: He used it, when we were in there, there weren't any clothes hanging, then had been taken out and thrown all over the room. There were a few things in there, there was, I believe there was a small pillow, a small Cubs pillow, that was in there...

Q: Were there doors to this closet?

A: Yes.

Q: And what kind, were they solid or louvered?

A: They were solid. They were like two, kinda four sections, two sections hinged together, to where you kinda just opened it.

Q: Was there any light in that closet?

A: Yes, there was a light that was on.

Q: And during the time that people were coming in and out of that closet, were you, was the door cracked and opened?

A: Sometimes it may have not been shut completely, but it was to where you couldn't really see out, I was on the part where you couldn't really see out of the closet.

Q: You, at the time when Aaron, and I want to make sure that I'm clear, at the time when Aaron was required to have sexual relations with you, did his penis enter into your vagina?

A: Yes.

Q: When you returned to the room. What was happening that you saw or heard, if you could tell us please.

A: When I returned to the closet?

Q: To the closet.

A: I'm not exactly sure what happened next. At some point in time Jason was made to have sex with Heather.

Q: Before that time, you stated that Heather was there with Aaron?

A: Actually I think that Jason was made to have sex with Heather first, and then Aaron. My point of reference is Brad was gone, Jason and I were in the closet, and Aaron was out with Heather, because that's the point where they were saying its 11:53, its 11:54, somebody better get their dick hard, harder, something to that effect.

Q: All right. At this time, who did you know to be having relations?

A: Aaron and Heather.

Q: And was this immediately following your return to the closet that this activity was going on?

A: It was a little bit later.

Q: And so close to 11:52, I believe was the time you referenced.

A: Yes.

Q: And at that time, you were in the closet still with...

A: Jason.

Q: Jason.

A: I was performing oral sex on him, because there were threats being made that if he didn't have an erection, that he would be shot. And I think their words were more of like I said before, "Somebody better get their dick hard," do something, so I was trying to help Jason.

Q: And this was occasioned because you heard someone else being threatened, and that would be Aaron having relations with Heather outside, in front of the wet bar.

A: Correct.

Q: And then what happened?

A: At that point in time Brad was gone, he had left with what I determined later to be the stockier of the two intruders. Jason and I were in the closet. Aaron and Heather were out in the wet bar area, while Brad was gone. Aaron went back into the closet, and I believe Heather went with him, and then I was called out to the wet bar, where the taller, thinner male raped me.

Q: At this point in time, and up to this point, I believe you referred to the time as about 11:52, somewhere in that period, is that correct?

A: Correct.

Q: And during that period of time from after 11:00 when the intruders entered your home until this period of time, were you able to get some better idea of what these people looked like, and, or what they might be wearing?

A: A little bit. Like I said, the closet light was on, there was some lighting in the living room or the hallway area. It wasn't dark, but I'm not sure what light was on.

Q: And with that lighting, what were you able to observe about Intruder #1?

A: Intruder #1 being the taller, thinner, black male.

Q: Yes.

A: I have a description. I'm not sure if I saw it all right at that moment, or if I saw him at a better time later. He had on an orange and black sweater that had FUBU written across it. He had on jeans, with what I believe was a leather coat, and I believe a kind of, some kind of boot, shoe, that he was wearing.

Q: When you say that this first person, the taller, thinner one, had on jeans, what kind of jean or color?

A: I believe they were black.

Q: And were you able to get a better description at that point?

A: That's as far as clothing.

Q: Throughout this period of time that you were in the company of these two intruders, were you able to develop more information with regard to their appearance?

A: Yes.

Q: And at this point in time, approximately midnight, this is where you're giving me the information, as to about that point in time.

A: Correct.

Q: Can you give me your description, up to that point in time, of the second person?

A: As far as he had on a black leather coat, I saw him just briefly as he was walking out with Brad. There was a big discussion, we couldn't find the keys to anybody's car, Brad's keys were usually on the railing going downstairs, and we couldn't find those, and there was a big discussion as to "Somebody better find their keys." I believe Aaron said "Here's the keys." And they wanted to know what car it was, and he said "The blue Honda." And at some point when the second person was taking Brad, he had come back in for some reason. I remember him being kind of in the hallway, on the way out the door, and he had made a reference to "Clean up that blood," but I'm really not sure where he was talking about or who he was speaking of.

Q: And did you get a vague description, physical size of this person?

A: Um...

Q: At that time.

A: As far as size he was bigger, and he had a black leather coat on, that's about it at that time.

Q: Was there ultimately a decision as to whose vehicle would be used?

A: I think they had found Heather's keys, to her car.

Q: And you're not aware of what vehicle might have been taken when Brad left the residence, is that correct?

A: I didn't see him leave.

Q: Was there something that you knew was going to occur when Brad left the residence?

A: They were taking him to the ATM.

Q: And how did you know that?

A: Initially, when they had broken in, and they were asking about the safe, they wanted to know who had money. None of us had any cash on us. They asked who had ATM cards, we had all kinda raised our hands as we were laying down, and then they went around and they wanted to know how much money everybody had, and we all told them approximately how much we had.

Q: Do you remember those statements that were made by the individuals?

A: I think Jason said around \$400 to \$500. I had about 4500, Aaron said a couple hundred, a think Heather said a couple hundred, and I think Brad had said somewhere between like \$1,000 or \$1,500 dollars.

Q: And so Brad was the first to be taken from the residence, is that right?

A: Correct.

Q: And do you know in descriptions of the taller or the stockier one, he left, or was forced to leave with?

A: The stockier one.

Q: So at that time, that left you at home with the first intruder, Heather, Aaron, and Jason, is that correct?

A: Correct.

Q: And was it at this point that Aaron was called out to the hall, or had he remained there?

A: I think he had... I'm not sure. I don't remember.

Q: What is the next thing you remember regarding Aaron, out in front of the bedroom that belonged to Jason?

A: When I was called out there?

Q: Yes. Before you were called out there.

A: Oh, he was with Heather, while I was in the closet with Jason.

Q: Do you know whether or not during that period of time, that countdown, there was any sounds that you heard that would indicate any action taken towards Aaron?

A: He had kind of protested, and didn't want to comply. I'm not sure.

Q: This is at the time he was with Heather.

A: Correct.

Q: Could you hear anything that led you to believe that there was an incident between Heather and Aaron?

A: Aaron again was just, I didn't want to do this, Heather kinda sounded in pain, from whatever was, from what was happening.

Q: After Brad's taken from the residence, when was the next time that you were removed from that closet area?

A: I was out in the wet bar area after Brad had left, and after Jason and I had been in the closet together. I went out, I was directed by the taller male to come out, where I was directed onto the floor, on all fours, and he vaginally raped me, from behind.

Q: When you say that you were vaginally raped, can you describe the part of his anatomy that entered into your vagina?

A: His penis.

Q: And during the time that this was occurring, you stated that you were on all fours, is that right?

A: Correct.

Q: And what were you able to see from this position/

A: As I was being raped, I had looked down between my legs, as he was unzipping his jeans, he had laid on the ground a small, silver handgun.

Q: Where did you observe that?

A; It was directly between my legs, on the floor.

Q: Was it within your reach?

A: I would have had to have reached back, between my legs.

Q: So it was behind you.

A: Correct.

Q: In between your legs.

A: Correct.

Q: Do you recall what items of clothing that this first person, the taller, lankier person, may have removed, if anything prior to intercourse?

A: I don't recall him removing any clothes, he just unzipped and pulled down, whatever he needed to pull down.

Q: Did he state anything to you, during this period?

A: I don't recall.

Q: How were you aware that that this what you were supposed to be doing?

A: I was just directed to get down on all fours. There was a, before he had penetration, he had told me to get myself wet, and I did that.

Q: And did you do that by placing your fingers into your vagina?

A: Yes.

Q: And was that prior to the sexual intercourse?

A: Yes.

Q: Do you know whether he ejaculated at that time?

A: I do not believe so.

Q: You had said earlier that while you were listening to the episode going on in the hallway between Aaron and Heather, and the countdown, that you at that time were concerned for Jason's welfare, is that right?

A: Correct.

Q: And was there a time when Jason was called out of the closet to be with Heather?

A: Yes.

Q: And when did that occur?

A: I believe it was right after that, right after Aaron and Heather.

Q: So shortly in this 11:52, 11:53, 11:54 time period, is that right?

A: Correct.

Q: So the next person would have been Jason to go out of the closet?

A: Correct.

Q: And do you know if Aaron returned to the closet, or where he might have been?

A: I believe he came back to the closet.

Q: And at the time that Jason went out to the area, was it still in the area of the wet bar?

A: Yes.

Q: And was it still at the time when you could hear what was happening in that location?

A: Yes.

Q: Where you able to determine what, if anything, was occurring at that time?

A: I believed them to be having sex.

Q: And what made you aware of that?

A: Again, Heather was moaning, she wasn't crying, it was just sounds of pain.

Q: When, prior to the time that you were called out and raped by the first person, had you had a time to talk to Jason in the bedroom?

A: At the time when I was performing oral sex, we had kinda just gone into the closet, and I'd started doing that, and he kinda stopped me, and I just said no and continued to do that.

Q: And when he might have returned to the closet, did he indicate anything regarding his activities with Heather that he was required to perform?

A: No.

Q: In fact, when you were all in and out of that closet area, was there any discussion among any of the people who might have been in the closet at the same time?

A: There was some discussion initially, I had asked Brad, and Jason, and Aaron earlier if they had any guns in the house. Aaron had asked "Should we do anything, should we try to get out?" That was kinda before that.

Q: Was there any reason you were not talking?

A: We were told not to.

Q: And how were you, what did they say?

A: I remember one time noise happened, I don't even think, we weren't talking and a noise happened, and the closet door came open and we were told to shut up. There was, I think, during one of those conversations they had heard us, and had yelled with the closet door shut "You better shut up, I don't..." you know, "I don't want to hear any noise" or else this is going to happen. We were just ordered to be quiet.

Q: And you complied.

A: Yes.

Q: And why did you comply?

A: Because I feared the result of not doing what they asked.

Q: Did that feeling ever change at all during that evening?

A: No.

Q: Your feeling not to comply.

A: It intensified at a later point in time. After the act of sexual intercourse with the first intruder, and I'm describing the first intruder as the tall individual, is that how you would understand it?

A: Yes.

Q: And #2 as the person who took Brad out?

A: Correct.

Q: All right. So if I refer to Intruder #1, that is from your description of the taller, lankier one, okay? After that had occurred, what happened then?

A: After I was raped by the first intruder, Heather, I don't remember if she was called out or if she was sitting there but she was also raped by him.

Q: And how were you able to know that was occurring?

A: I was sent back into the closet, but was still able to hear.

Q: And at that time was Aaron in the closet, then you and Jason?

A: Yes.

Q: Heather was the only person that would have been out, other than the #1 intruder.

A: Correct.

Q: Do you know approximately how long she might have been out there?

A: She never came back into the closet.

Q: While you were in the closet with Aaron, you stated that you could hear Heather, is that right?

A: Yes. And it was, Aaron was upset about what was happening to Heather.

Q: How were you able to tell he was upset?

A: he was crying, and was talking about you know, it shouldn't happen this way, and just...

Q: That was in response to to what you were hearing, Heather moaning in the hallway?

A: Correct.

Q: After that incident had happened with H, was there a time when Brad returned to the residence?

A: Brad came back, and got into the closet, and Jason left, at their orders, and he left the house.

Q: Prior to the time that he left the house, was he able to put on any clothing?

A: As each person left, I believe he put on a shirt and pants. I believe Brad did also. Before I left I put on a shirt, a sweatshirt, but wasn't, I didn't put on any pants.

Q: Could you give an estimate of time. How long Brad might have been gone from the residence?

A: Maybe 30 minutes.

Q: And when he returned, you stated that Jason was next called, is that right?

A: Correct.

Q: Did Brad talk to you at all or say anything as to what had happened when he returned?

A: No.

Q: And were you in the closet when he returned?

A: Yes.

Q: And were, was Aaron still there?

A: Yes.

Q: And was Heather still outside of the closet?

A: Yes.

Q: It's your best judgment of time, if you recall that approximately... given the 11:52 point in time, would this then be approximately half an hour after that, or shorter?

A: After that.

Q: Do you recall what happened after Jason was taken from the residence?

A: When he came back, there was some discussion as to who was leaving next. I got up to get out of the closet, and Aaron said no, I'll go. And I just got up, and put on a sweatshirt, and climbed over the bed and grabbed my... I think I grabbed my checkbook that had my ATM card in it, but I didn't take my purse, and we left.

Q: Now at the time when Jason left, there was a period of time before he returned then, is that right?

A: Correct.

Q: And can you give us an approximation of that time period?

A: Maybe 15 to 20 minutes.

Q: Did you remain in the closet the entire time Jason was gone from the residence?

A: Yes.

Q: Did Brad and Aaron remain there with you in that closet?

A: Yes.

Q: And Heather was still not in not in the closet.

A: Correct.

Q: So her whereabouts, at that time, you were not aware of.

A: No.

Q: Do recall which of the two intruders took Jason to the ATMs?

A: The same one that had taken Brad, the stockier.

Q: And that would be the person you're referring to as #2.

A: Yes.

Q: I'm going to back up for just a minute, to ask you a few questions about the weapon that you saw. Do you recall that testimony? The weapon that you saw at the time you were being sexually assaulted by the wet bar.

A: I don't. I recall testifying to it, I'm not sure of my exact words.

Q: All right. Can you tell me what type of metal it was that you saw on this weapon?

A: It was silver.

Q: Are you talking about silver like the color of jewelry?

A: Yeah, kinda, yeah.

Q: And do you know, have you seen any other color weapons?

A: Yes.

Q: What other colors have you seen/

A: Black

Q: So, this particular gun, can you give us an indication of what type of gun it was?

A: It was smaller, I think a semiautomatic. It didn't have the, it didn't have the revolver, and it wasn't large, it was maybe 4, 5 inches.

Q: And it did not have the piece that revolved around.

A: No.

Q: And it was made of silver.

A: Yes.

Q: And that's about what you got to look at as you were forced to have intercourse, is that right?

A: Correct.

Q: When you were next, did you ever give any thought to taking that weapon that you saw?

A: I had thought about it, but then decided that in order to grab it, I probably would have been too slow to be able to reach, and he probably would have gotten it back before I did.

Q: The time that you were then removed from the house, were you able to put on any undergarments, pants, shoes, or other clothing?

A: I put on a white sweatshirt.

Q: Was anything on the front of the sweatshirt?

A: I believe it had some writing on the front of it.

Q: And at that time, were you able to get any kind of an estimate of what time it might have been?

A: Not if I was in the truck, he was fiddling with the radio station the whole time, and the clock wasn't on there.

Q: Can you describe for us, if you will, the period of time from when you put the sweatshirt on, and how it was that you left the residence, where you went, and what occurred?

A: I left through the front door, and I was told to get into the driver's side of Jason's truck, where I went out the driveway, and went towards 127th Street, and turned north up to 121st Street. I remember looking to see if there was traffic coming, and was told not to look that way, and then was told just be hand gesture to go left, towards town. I drove... I had a conversation with the person in the truck about, he said, "Did he have sex with you back there?" I said yes. He asked me if I enjoyed it. In order to appease him, I said yeah. He wanted to know if I had ever had sex with a black person before. I said no. He wanted to know if it was better than my boyfriend. He told me at one point in time that it was too bad we didn't meet under other circumstances, because I was kinda cute, we'd probably, you know, go out. And we got to the ATM. I withdrew I believe \$350 from my savings account, because that was all you could withdraw at one time, then made a second withdrawal of like \$150. And I said, you know, "Is that all?" And he said "Well, is that all you've got?" And I said yes. On either the first or second withdrawal, I don't remember which one, I had leaned over to get the money out of the ATM, and he had reached his hand over and had rubbed... had just kind of groped me to where I kind of fell out of the truck. At that time I could tell that he had on black or really dark leather gloves, because I could feel them, and then when I looked when he did that, when I fell down I had looked down to see what was happening. I withdrew money and then we left and I drove back the same way we had come.

Q: At the time that you had been taken first to Jason's car, his truck, what kind of truck would this have been?

A: He had a '99 Dodge Dakota.

Q: What color was it?

A: Silver.

Q: Were you in some way directed to drive that vehicle?

A: Yes.

Q: And how did that happen?

A: It was kind of a hand gesture to the driver's side of the door.

Q: Now during the time you were driving, where was he seated?

A: He was in the passenger seat.

Q: And what was he doing at that time?

A: he was just kinda slouched back in the corner with his head resting on his legs.

Q: Did his hand have any weapon in it?

A: I saw what I believed to be a gun.

Q: Were you able to describe it at that time?

A: No.

Q: When the, Jason's truck, the Dakota, when you had opened the door, either the passenger door or the driver's door, was there anything that illuminated the inside of the cab?

A: He had dome lights.

Q: And were they working on that evening?.

A: Yes.

Q: So do you recall opening the door to the vehicle?

A: Yes.

Q: And the #2 intruder open his own door to get in on the other side?

A: Yes.

Q: Do you recall if that was done at the same time or individually?

A: It was done individually, I got in first, and then he had to continue walking around the front of the truck, until he got in. And because I'm short I had to move up the seat before we left, because I couldn't reach the gas pedal.

Q: Do you know whether or not the lights of the truck were on when he walked in front of it, do you recall?

A: I don't recall. The keys were already in it, I don't know if the lights were on.

Q: Had you closed the door to the vehicle before he got in on the other side?

A: Yes.

Q: And when you drove, was there interior lighting in the vehicle, other than the dome light?

A: The dash lights and the radio,

Q: And you said that he was touching the radio, is that correct?

A: Yeah, he was flipping in between, I think it ended up on like 103.3.

Q: When the conversation occurred when he inquired about the sexual intercourse you'd been forced to perform with #1 intruder, did you have any discussion with him about your fears?

A: I asked him if he was going to shoot us. He said no. I asked him again, and I think I said "Do you promise" and he said "Yeah, I'm not going to shoot you."

Q: Had you at that time believed that you might be shot?

A: Yes.

Q: And did his statement that you would not, did that convince you?

A: It did. I went back and as I got in the closet I told... Brad, Jason, and Aaron were still in there, and I said "I think we're going to be okay, I asked him, he said he's not going shoot us."

Q: Now, back to the traveling to the ATM. When you got to that location were there lights that illuminated the ATM?

A: Yes.

Q: And when you withdrew the money, were withdrawing the money, did you have to extend yourself out of the vehicle in some way to get to the machine?

A: Yes.

Q: Did you... How was that done, through a window or door?

A: I had rolled down the window, and I was reaching out to get it but I think I had to open the door because I hadn't pulled close enough to the ATM to reach the money.

Q: And would that again illuminate the inside if you opened the door while the vehicle was running?

A: Yes.

Q: You stated that you could feel a gloved hand and then saw dark gloves on #2 when you were... "groped" is the word that you used, is that correct?

A: Correct.

Q: Can you tell me what part of your body was touched by this gloved hand?

A: My vagina.

Q: And again you had no underwear on and no pants, is that correct?

A: Correct.

Q: Did you say anything to him at that time? Did you make any complaint?

A: I don't recall.

Q: The bank that you went to, the ATM, do you recall what the, where the ATM was located exactly?

A: It was on the intersection of 21st and Webb.

Q: And what kind of bank would that have been there?

A: I think it's a Commerce, I'm not sure.

Q: It was not your personal bank?

A: No.

Q: And what was your personal bank?

A: Capital Federal.

Q: Do you know what Jason's personal bank was?

A: He had two. His checking account was at Prairie State Bank, and his savings account was at Capital Federal.

Q: So the money that you withdrew, the first 4300 that you got out of this ATM was not on your account but on a bank that just supplied the ATM.

A: Correct, but I believe it was \$350.

Q: I'm sorry, \$350. Is that otherwise correct?

A: Yes.

Q: After you had withdrawn this money from the bank, do you recall the nature of the bills that might have come out?

A: I believe they were twenties.

Q: Was there anything larger than that?

A: I don't recall.

Q: And with this money in your hand, what then did you do with it?

A: I gave it to the person in the truck, #2.

Q: And how did you do that?

A: Just turned and handed it to him.

Q: Was the door still open at that time?

A: I don't believe so.

Q: After the money had exchanged, then did you attempt another withdrawal at that bank?

A: I didn't hand him the money until I had made both withdrawals.

Q: Both withdrawals, okay. Did you proceed anywhere else other than, after that ATM did you go anywhere else?

A: No.

Q: And who was driving?

A: I was.

Q: Can you tell me the route that you took?

A: On the way home?

Q: Yes.

A: Same way I had come. I went, the ATM, when you pull out, you have to go across Webb, and then go south to the intersection and then turn back east on 21st Street to 127th and then west onto Birchwood.

Q: Approximately how long did you spend at the ATM?

A: Probably 5 minutes withdrawing money.

Q: And approximately how long had it taken you to drive there?

A: Maybe between five and ten.

Q: And so the return trip would have taken you approximately the same time?

A: Correct?

Q: Was there any conversation on that return trip, that you recall?

A: I don't recall any.

Q: Once you had returned to the residence at Birchwood, do you recall where Jason's truck was parked at that time?

A: I pulled into the driveway.

Q: And I believe you had told us earlier you had parked in the driveway in your red Paseo, is that right?

A: Correct. When I pulled into the driveway at that time, my car was on the left side of the driveway, and Heather's car was parked behind my car, and we walked into the front of the house. When we were walking into the house, he had made a comment about whose car is this, and I said "It's mine, why, do you want it?" and he said no. As we were walking in I believe he was closer to the garage, which would have been south of me, and at that time was not really making a big attempt to conceal himself, and as I continue to walk up, I believe the flood lights, there's a light on the corner of the house where the garage is, I believe that to be on. And then I continued into the front of the house, and then when I walked into the house someone had said "Hey, who is it" or something like that because he said "Its just me," talking to the other individual.

Q: At the time when you returned home in this Dakota, and parked it, you exited from the driver's side, is that correct?

A: Correct.

Q: So then you would have opened the door, and then been on the driveway, is that right?

A: Correct.

Q: You mentioned something about a floodlight in that area.

A: Correct.

Q: Is that to illuminate the area of the driveway ?

A: It's on the corner of the house, where the driveway meets the sidewalk, and goes up to the front of the house.

Q: And does it do a good job of allowing you to see so you don't trip and fall/

A: Yeah.

Q: Then you would, your Paseo would have been right next to you then.

A: Yes, it was on my left.

Q: Do you recall if you went around it, or behind it?

A: I went in front of it.

Q: In front of it. And where was #2 intruder at that time?

A: I believe he was at the front of the car, kinda we almost met at the same time, and I went, I walked in front of him and then walked into the house.

Q: Now, on the porch of that home, you had told us earlier in your testimony that a light had come on that you could see into Jason's bedroom, do you recall that?

A: Yes.

Q: You said there was a light on the porch.

A: Correct.

Q: In terms of your conversation with him regarding the car, do you remember where that might have occurred?

A: My conversation with him? It was right in front of the car, under the floodlights.

Q: And were you able to get...did you observe him at that time?

A: Yes.

Q: And then when you went into the house, do you recall whether or not the porch light was on?

A: I don't recall if that light was on.

Q: And then as you entered the house, did you need to use a key?

A: No.

Q: Is this the kind of lock that you would have to lock each time you used it?

A: Yeah. There's a glass door, and then there's a lock, you wouldn't have to use a key in the bottom lock, but on the deadbolt, you would have to use a key to open it if it was locked.

Q: All right, so if you were coming in and out of the house, you could leave it unlocked as long as you didn't lock the deadbolt, is that right?

A: Correct.

Q: And at this point there was no lock on the door, you were able to enter without a key.

A: Correct.

Q: Do you remember who went first, you...

A: I did.

Q: You did. And do you recall what area you went to at that time?

A: I went to the closet.

Q: Once you got to that location, what happened?

A: Like I said, I had gone in and told them I didn't think they were going to shoot us, because I had asked him, and Aaron left to go to the ATM.

Q: All total, did you have an estimate of how long you had been gone from the residence at Birchwood?

A: I would guess maybe a total of 20 to 30 minutes.

Q: And when you had last left the gentlemen were in the closet, and Heather was outside the closet in some location, correct?

A: Correct.

Q: When you returned to the residence, did you observe heather at that time?

A: I believe she was sitting on the floor out by the wet bar.

Q: And when Aaron was taken from the residence, did he have on clothes at that time?

A: I believe so. I think he put on pants and a shirt.

Q: Do you know how long Aaron was gone from the residence?

A: About the same amount of time I felt that I was gone, about 20 to 30 minutes.

Q: During that 20 to 30 minute period of time that Aaron was gone, what happened in the house?

A: While he was gone Heather was still outside of the closet, and I heard some conversation that she had with the person who was out there. I was sitting in the closet on the east side, Jason was in the middle and Brad was on the west. While she was out there, I heard him ask "What's Weller's?" and I heard her say "It's a whiskey." I heard some, some rumbling... came over, the closet door opened, I saw a glass, come in. and he said "Does anyone want a drink?" We all just kinda said no, then he shut the closet and left. I heard some, Jason had a big like popcorn tin that my Mom had given him next to his bed, and then there was a change jar, and you could hear some moving around and what sounded like the jar being moved and the popcorn tin opened. And I heard him ask Heather "Whose is this?" She said she didn't know but she guessed it was probably Holly's. Then he came over again. Oh, before he came over, he asked who Holly was, who did she belong to. Heather said Jason. He came over, opened the closet door, and said "Which one's Jason?" Jason said "Me," and he said "Is this the only one?" and Jason said "Yeah, that's it." He wanted to know for certain that was the only one, Jason said "Yeah" and he shut the door.

Q: Now, at the time you were not visually connecting with anything that was going on in this conversation, were you?

A: No, correct.

Q: Did you have a thought in your mind as to what was occurring?

A: I assumed it to be an engagement ring. When he opened the door and asked Jason that, afterwards I had looked over at Brad, and Brad and I had actually had a conversation a couple days before that, it was kinda one of those "I told you so" looks. Jason and I had spoken several times about marriage, engagement, those kinds of things.

Q: And would it be fair to say that it was in your mind that this discussion related to an engagement ring that would have been given to you?

A: Yes.

Q: Did Jason say anything at that time?

A: No.

Q: And other than Brad's knowing look, that was in relation to the conversation that you'd had with him previously.

A: Right. And with what Heather had said, saying "It's probably Holly's, but I'm not sure" and then him asking Jason if it was mine, I assumed that's what it was, otherwise, why would he ask somebody else about something that's mine, unless he was going to give it to me.

Q: At some point in time, we had talked about Nikki being in the closet. Did she remain there, at least up to this point?

A: I had a basket, she was in the closet, she was over by Brad. I had a basketful of stuff, of her stuff under the wet bar sink, in the cabinets underneath, that had like a brush and her muzzle and like an extra leash or collar, some things like that. And at one point, they had, he had actually opened the door and thrown her muzzle in, and it was put on her.

Q: When you say he, can you tell me again who you were talking about?

A: The first intruder.

Q: The taller lanky one, is that right?

A: Yes.

Q: And were there any threats or anything made regarding your dog, that were of a continuing nature?

A: Just "Shut that dog up," and he just threw the muzzle in.

Q: Did you put it on your dog?

A: I believe that I did.

Q: And so, she remained with you during that time, with a muzzle on her face, is that correct?

A: Correct.

Q: What color was the muzzle?

A: I think it was black.

Q: After the conversation about the engagement ring, do you recall what happened next in time?

A: Aaron came back from the ATM, at which time I was taken out of the closet. I believe that's when the stockier one called me "shorty." I walked out of the room and was led over to the dining room, but it didn't have any furniture in it. I had put up some Christmas decorations the week before and I had left the boxes sitting in that room, so there was a pile of like storage boxes, with some Christmas items in them. And then, as I was walking over, the stockier person asked me about my earrings. He just kinda pointed to them and said "What are those?" And I said "Well, they're fake, do you want them?" And then I took them out and laid them on the boxes of Christmas decorations. At one point, as I was walking over to that area, he had jabbed me in the back with what I assumed to be a gun. It was a hard... it wasn't a hand, it was kinda like a nudge. And then I'm not sure what move I made, but I had said something, and he said "Don't worry, I'm not going to shoot you yet." And then I was somehow directed to kneel on all fours, where he raped me.

Q: Did you have any reaction to the comments he made to you about "Don't worry, I'm not going to shoot you yet?"

A: My description, I just kinda wiggled out, kinda...

Q: What were your thoughts about this person?

A: I assumed that what he had told me was incorrect, when I asked him if he was going to shoot us. That he had lied, and I thought that maybe at that particular time he was actually going to shoot me.

Q: When you said that you were placed down on all fours, that would have been in the dining room area, is that correct?

A: Correct.

Q: Approximately where would it have been in relation to the south window in that room?

A: It was in between the window, the wall where the windows were, and the boxes facing... I could have been looking outside, facing the southeast.

Q: Now, the last sexual incident that had occurred had been Intruder #1 forcing you to have intercourse, is that right?

A: Correct.

Q: And now you were with Intruder #2.

A: Correct.

Q: Can you tell me what part of his body was placed into your vagina?

A: His penis.

Q: And do you know whether or not he ejaculated at that time?

A: He did not.

Q; Can you tell me what actions he took towards you?

A: He kind of grabbed the back of me, pulled me up, turned me around, and ejaculated into my mouth.

Q: Did he make any statements to you?

A: Somehow he indicated that I was to swallow it, which I did.

Q: And at the time when you were forced to have his penis in your mouth, was your vision in any way obstructed by anything?

A: No.

Q: Were you able to see or look at this individual at that time?

A: I did.

Q: After he had ejaculated into your mouth, can you tell us the circumstances of that happened then?

A: He pulled up his pants, we turned around, and I walked in front of him over to Jason's bathroom door, where I opened the bathroom door and saw Intruder #1 raping Heather from behind. He was... she was on all fours, he was actually kneeling on both knees. I didn't...

Q: Were you able to visually observe the act of intercourse?

A: Yes.

Q: Were you able to note that his penis was in her vagina?

A: Yes.

Q What happened when you saw that?

A: I actually opened the door, saw that, and he shut the door in my face and said he wasn't done yet, where I kinda just stepped back and waited until I opened the door again.

Q: Now, the west bathroom was the one that you talked about where Jason normally kept his things and would use that, is that right?

A: Correct.

Q: Sizewise, how big a bathroom would this be?

A: There's a shower, a toilet, and a sink. There's probably two feet in between the sink and the door.

Q: When this episode of sexual intercourse between Heather and #1 was occurring, what could you see when you opened the door?

A: I could see him kneeling, he kinda had his hand down, by...by his penis, and Heather, I could only see the back half of her at that time.

Q: Which way would her head have been facing?

A: South.

Q: So that would be, where the door would open, her head would be behind the door?

A: Correct.

Q: And when the door would open, you could see part of her body and his body, is that right?

A: Correct.

Q Was there anything able to assist you in making this visual observation?

A: The bathroom light was on.

Q: And you had actually opened the door, had you not?

A: Yes.

Q: So, within two feet of you, the intercourse is occurring in that small bathroom.

A: Yes.

Q: Approximate measurements.

A: Yeah, two or three feet.

Q: When you saw Intruder #1, were you able to get a good look at him at that time?

A: Yes, I was.

Q: Had you been able to observe him throughout the evening?

A: Yes, I had.

Q: And the time you then opened the door, what did you specifically observe at that time, about that person.

A: he had turned to look at me, as I opened the bathroom door. I saw his clothing, I saw his face, his hair. I could see the things behind him in the bathroom, I could see Heather, everything that was in my line of vision.

THE COURT: (Inaudible) stop right here.

MS. FOULSTON: That would be fine, Your Honor.

(Recess)

THE COURT: Continuing on now, the State's case in chief. Ms. Foulston.

MS. FOULSTON: Thank You, Your Honor.

Q: For the record, you are Holly G*****, is that correct?

A: Correct.

Q: Miss G*****, you were here in court yesterday, and before you were seated at the witness stand, you were given an oath. Do you recall that?

A: Yes.

Q: And you are still under the same oath today, you understand that?

A: Yes.

Q: When we had talked yesterday, there were a number of different locations within the home that you discussed, do you recall that?

A: Yes, I do.

Q: And a number of different people that were in that home.

A: Correct.

(The witness is shown and asked to identify photos of the victims, locations in a floor plan of 12727 Birchwood, and locations in photos of 12727 Birchwood)

Q: In order to get you to a point in time, I believe that we had left off yesterday talking about the point where you had returned back to the residence, after you'd been taken to the ATM machine, is that correct?

A: Yes.

Q: And when you were at the ATM machine, described that there was some reason for you to have to open the door to the Dakota, do you recall that?

A: I couldn't reach the money in the ATM.

Q: So, had you tried through the window first by opening that?

A: I had rolled down the window, yes.

Q: And you weren't successful in getting your arm out to reach the ATM, is that right?

A: I don't believe so.

Q: And was it at this point in time that you were touched in your vaginal area?

A: Yes.

Q: And that caused you to do what?

A: I was startled, so I kind of fell and caught myself with my arm on the door.

Q: As you returned back to the residence on Birchwood, you identified a conversation you had had with Intruder #2 that location, is that right?

A: On the way back to the house is I believe when he had actually the remark about too bad we didn't meet under other circumstances, and...

Q: Did you reply to that comment?

A: I had just said kinda "Yeah."

Q: Was there any response from him?

A: He had said, "What does that mean?" And I said something to the effect that I wasn't having a lot of fun or this wasn't a good time.

Q: As you entered back into the residence, at that time you were clothed only in...

A: A sweatshirt.

Q: A sweatshirt. And I believe that you told us it was white in color?

A: Correct.

(The witness is shown and is asked to identify a T-shirt, muzzle, and earrings)

Q: At points in time during the sexual assault, were you able to see Heather Muller and what condition she might have been in?

A: Yes.

Q: Can you explain how she looked and how she responded?

A: She looked scared. She didn't have any clothes on.

Q: Did she ever discuss or talk with you during those episodes in the house?

A: No.

Q: And during that time that was spent in that home with those intruders, were you also frightened?

A: Yes.

Q: And when you were in the closet, did anything occur because of that fright?

A: I had actually urinated in the closet.

Q: And that was...

A: From fright.

Q: I believe you had given some time parameters during which these activities were occurring, and the first one was somewhere around 11 pm, when the intruders invaded the home, is that correct?

A: Correct.

Q: And the next time period you give us is 11:52, by listening to what someone is saying to Aaron in the hall, is that right?

A: Correct.

Q: And in relation to that time, you have given us descriptions of the sexual activities that occurred, and I want to, from the information that you've given, make sure that the locations and the people are identified.

A: Okay.

Q: Within how long a period of time were you and Heather required to sexually assault each other, at the location of the wet bar?

A: It was towards the beginning of the night.

Q; So sometime after the 11 pm hour, is that right?

A: Correct.

Q: And how long did the episode go on?

A: Maybe 5 minutes, five to ten minutes.

Q: And this was digital and oral, simultaneously, and each to the other, is that correct?

A: Correct.

Q: The next sexual episode that occurred was when... who was first brought out of the room?

A: Brad.

Q: And at that time, is that when you is that when you indicted you felt the presence of another person there, is that right?

A: Correct.

Q: How long did that incident take?

A: Probably a little bit less than five minutes.

Q: And the next person to come out was Jason, is that right?

A: Correct.

Q: And approximately how long did you engage in sexual activity at that time?

A: Same, probably a little bit less than four to five minutes.

Q: I believe you told us that the next person to come out would have been Aaron, is that right?

A: Correct.

Q: And was it at this point in time that Aaron had been struck in the head?

A: Yes.

Q: And were you able to identify the item with which he was struck?

A: It was something hard, from his reaction. I don't recall what it was.

Q: You had told us earlier that when the intruders came up to the room, that they had not only handguns, but that they were brandishing a golf club, is that correct?

A: Correct.

Q: Was that golf club at some location where you could see it?

A: When it was brought up.

Q: But subsequent to that time, it wasn't in the closet or available for you to see, is that right?

A: Correct.

Q: At this point in time, excuse me, when Aaron attempted... said he would not do this, at that point you said he was hit.

A: Correct.

Q: How did he react to that?

A: Just was upset, and indicated that it hurt, was in pain.

Q: I guess that was my point, did he just lay there silently, or did he make some indication that it was painful?

A: No, he made an indication it was painful.

Q: At that time, was he able to penetrate your vaginal area with his penis?

A: Yes.

Q: And then at that point, you were taken back, or told to go back to the room. Approximately how many minutes did you spend with Aaron at that time?

A: Probably a little bit less than, probably right around five, five minutes.

Q: Now at the time that you and Heather, and you and Brad and Jason and Aaron were all required to perform sexual acts, both of the individuals were present at that time, is that correct?

A: Correct.

Q: Then the next person that would have been taken out of the closet would have been...

A: I'm sorry, at what point?

Q: After Aaron was required to have sexual intercourse with you, did he remain in that location, and you go to the bedroom?

A: Yes.

Q: So who would have been coming out at that time?

A: Heather.

Q: And did you know where she was coming from?

A: I believe she was coming out of the closet.

Q: All right, so at some point in time within a 15 minute span, from when you and Brad were required to have sexual relations and you felt someone next to you, at some point between you and the episode with Aaron, Heather was no longer by your side.

A: Correct.

Q: When you heard Heather in the hall area, is this the time that you heard Aaron's refusal?

A: He had also refused with me.

Q: Now is there... at a point you had testified that Aaron refused sexual relations, that Heather was in that location as well.

A: Correct.

Q: And then this was the time period in which the time of 11:52 begins as a countdown, is that correct?

A: Correct.

Q: So at 11:52, Aaron and Heather are in the area of the wet bar?

A: Yes.

Q: And during this time, when you were with Jason, you attempted to help Jason so he would avoid not being able to get an erection, is that correct?

A: Correct.

Q: And then Aaron was taken out of that area, and then brought back to the closet?

A: Yes.

Q: And then Jason was called to go out to where Heather was located.

A: Correct.

Q: The sounds that Heather made, in a way I think that you have described that she was moaning?

A: Correct.

Q: Miss G****, can you describe better for us the sound that you heard that gave you the impression that there was activity going on at that location?

A: She just, I don't remember if she was saying words or not, it was just to the effect of, she was in pain. Moaning, groaning, whatever words you choose to describe that.

Q: And did that leave an impression on you at that time as to what was occurring?

A: I believed her to be... being raped.

Q: How long, do you know if Jason had stayed out in that wet bar area?

A: Not very long. Five minutes.

Q: And in the closet with you would have been who?

A: While he was out there, Aaron.

Q: And at some point in time, Brad Heyka was taken to an ATM machine, is that right?

A: Correct.

Q: Did you know whether or not there was any time that Brad was required to have sex with Heather?

A: I believe so. After preliminary hearing I had contacted Detective Ralph by phone, and I believe my original statement was Brad was in the closet with me, while Jason and I were in there, and he was not, and I had called to clarify that with Detective Ralph.

Q: So at a point in time, Brad was naked and not in the closet, and neither was Heather, is that correct?

A: Correct.

Q: And during this time, was there a continuous sound from Heather Muller?

A: Yes.

Q: On the return to this home, after you had gone to the ATM, and you placed the times subsequent to the hour of midnight...

A: Correct

Q: And I believe you had mentioned that you were not able to see the clock in Jason's. truck because #2 intruder was fiddling around with the...

A; Radio

Q: With the radio. But your time frame, in which you left the residence, and traveled to the ATM, used the ATM, and returned would be approximately what length of time?

A: 15, 20 minutes.

Q: I believe you said Brad was there a longer period of time, is that correct?

A: Brad was gone the longest.

Q: And then Jason following?

A: Correct.

Q: And then it would be you.

A: And then Aaron.

Q: And then Aaron. So the shortest period of time, that would have been your time, 15 to 20 minutes, in relation to Brad?

A: In relation to Brad, yes.

Q: When you returned back to the home, I believe you told us about an episode that had occurred with Intruder #2 in the dining room area, which you've described, and which has been in the Power Point presentation, is that right?

A: Yes.

Q: Now, from this point forward, I want you to tell me, after that oral sex and vaginal sex, what happened then right from that point?

A: I got up and started walking towards the bathroom, opened the bathroom door, looked, saw Intruder #2 vaginally raping Heather. He shut the door on me, said he wasn't done yet. I stood there for a few minutes, re-opened the door, where I was directed, got down on all fours.

Q: At what happened at that time?

A: He vaginally raped me.

Q: And what part of his anatomy entered into your vagina?

A: His penis.

Q: Now, approximately how long a period of time do you recall he might have been in the west hall bathroom with Heather?

A: I believe he was there the whole time that I was being assaulted in the dining room.

Q: And then when you were required to come into that location, where were you placed in relation to the sink?

A: I would have been parallel facing south.

Q: And do you recall the position of your body at that location?

A: I would have been on all fours.

Q: And did he penetrate from the rear?

A: Yes.

Q: At this time, in that bathroom, did you notice any other person in there?

A: I believe Heather had already gotten up and left the bathroom.

Q: All right, did you then see her at any point in time after that period in the bathroom?

A: I saw her as we were sitting by the wet bar area.

Q: Now at the time of the sexual assault in the bathroom, after the... did there come a time... let me rephrase that. During that sexual assault, did there come a time when it stopped?

A: He stopped, I heard some noises that sounded like a condom coming off, and then the toilet was flushed, and then I got up and left the bathroom.

Q: Now, Miss G*****, you told us that when Intruder #1 sexually assaulted you by the wet bar, at the time when you were able to see the weapon, we were talking about whether or not you knew, or did not know, if there was an ejaculation. Do you recall that testimony?

A: Yes.

Q: And is there any way for you to have known at that time whether he ejaculated or not?

A: I believe him to have not, because he called Heather over after and raped her.

Q: And that is your belief...

A: Correct.

Q: Based on the subsequent contact with Heather, is that right?

A: Correct.

Q: But you have no other basis for that other than that belief.

A: No.

Q: After the sexual assault by Intruder 31 in that west hall bathroom, is that when you were placed at the wet bar area?

A: Yes.

Q: And who else was there at that time?

A: Heather and I were both sitting there, and the guys, Aaron and Brad and Jason, I believe were in the closet. Both intruders were standing in front of us. We would have been facing towards the stairs.

Q: And what were they doing at that time?

A: They were talking about something. One of them went down the stairs and was down there for a little bit. I remember, Heather and I were both cold, and I believe that's when I put a sweater on. Then eventually he came back up the stairs. They were mumbling something, and I'm not sure what they said, except I heard "big screen," and shortly after we were taken out of the house.

Q: Now from the location... we noticed the photographs of the wet bar area (inaudible), the photographs you had described earlier. About the wet bar, if I were to be standing in the wet bar at this time, straight directly to the east, that would be in the direction of the steps, is that right?

A: Correct.

Q: In fact, there was a short... a short wall would have been to your right... to your left, is that correct?

A: To the left.

Q: And as you proceeded from where you were seated to the first step, how much of a distance would that have been?

A: Five feet, six feet maybe.

Q: So six feet, and then you stated there were some stairs that went down towards the basement, is that right?

A: There was like two, three, maybe four, and then there's a landing, and then there's another landing, so you can get around the corner.

Q: All right. So the stairs would go a couple feet down, go to a landing, turn the other direction, and then go down to the basement, is that right?

A: Right.

Q: So that when these individuals who might be on the landing turn to go downstairs, you wouldn't be able to see them, is that correct?

A: Correct.

Q: But when they were on the landing, and you were seated on the floor, approximately where would you be in relation to those people?

A: Eye level.

Q: And did you have an opportunity to observe the two two intruders as they came up the steps?

A: There was only one that came back up the steps.

Q: Which intruder?

A: Intruder #1.

Q: And that would be the stockier individual who had taken you to the ATM and assaulted you in the dining room area, is that right?

A: Correct.

Q: And I've got a measuring tape... I don't know how far it goes, I don't know if this is going to do it. Approximately how far would you have been at eye level from that intruder when he stood on those steps, approximately how many feet?

A: It's probably, like I said, five feet to the steps, and then he was coming up, and I just kinda watched him coming up from the landing. So probably seven, seven feet.

Q: I have here a measuring tape, and I'm going to give you one end of it to hold, okay? And at the end of it is six feet, is that your understanding?

A: Yes.

Q: All right, so this would be approximately six feet.

A: Correct.

Q: And the distance with Intruder #2 would have been seven feet and then closer?

A: Correct.

Q: And at that time was the hallway illuminated?

A: I believe so.

Q: Were you able to get a better look at that individual at that time?

A: Yes.

Q: And what did you observe?

A: I saw his coat again, I kinda got a better look at his face. His hair was different than the other person's.

Q: What was the difference?

A: It wasn't sticking out, it was closer to the head, flat.

Q: And were their hair styles distinctively different?

A: Yes.

Q: Which one was taller?

A: The one that had the hair sticking out.

Q: That would be #1, is that correct?

A: Correct.

Q: And were their body builds different?

A: Yes.

Q: Which one was heavier?

A: The one with the hair to his head.

Q: And did you describe them at some point in time, as fat and skinny?

A: The taller one with the hair sticking out I called skinny, and the one with the hair sticking to his head I called fat.

Q: All right. When I'm thinking of that, I'm thinking of very skinny... very stocky, very large person. Do you have a better description that would... was he overweight, obese?

A: Not fat, not obese, it's just that he was bigger.

Q: Bigger. So, you don't mean that he was like an overweight person to you.

A: No.

Q: And the tall one was not... did he appear to be anorexic looking?

A: No.

Q: So the description is just to distinguish between those two, is that right?

A: Right.

Q: The stockier one, #2, you indicated he had a coat on, a mid-size coat, leather. Is that right?

A: Correct.

Q: And I believe you said the color was...

A: I believe it was black.

Q: And also you told us that these... that this individual had on gloves, dark in color, is that correct?

A: Correct.

Q: Now, during the time that these people were in the home, did you observe them to maintain keeping their gloves on?

A: I don't remember, if they had taken them off during the sexual assaults or not.

Q: Okay, but otherwise...

A: Yeah, I think they had them on.

Q: And the shorter one, were you able to get a clothing identification with his coat on?

A: I don't know, I can't remember what he had on underneath it. I just remembered a coat, and he had on jeans, and his gloves.

Q: Again, when we talk about jeans, are we talking about blue, or other, or just the style of jeans?

A: When I say jeans, I mean the style, as opposed to not dress pants, not khakis, not sweats.

Q: So, you described Heather's brown jeans as what?

A: As jeans.

Q: As jeans. And now, when we're reflecting on this individual suspect...

A: Intruder.

Q: Intruder #2, were you able to make an identification of the color of the jeans he had on?

A: I believe they were just a darker, a darker denim.

Q: Denim as in darker denim blue?

A: Right. I mean, not like, not... I don't think they were black, and they weren't brown, or arrange, or whatever.

Q: And they didn't appear light like stone washed or anything like that.

A: No.

Q: At this time, you indicated that there was some activity going on, coming up from the basement, and discussion about a big screen TV. Do you recall that?

A: Yes.

Q: Was there a big screen TV in the basement?

A: Yes.

Q: And who did it belong to?

A: Brad.

Q: When you say it was a big screen TV, do you know how large it might have been?

A: Not that big, but not a regular 27 inch. Its larger than a 27, but its not one of those stand-up... I don't know how big really big screen TVs are, but it wasn't that beg. It was...

Q: It was large.

A: It was large.

Q: So the word 'big' in big screen would mean it was big, is that correct?

A: And it was smaller than the, the screen we have here in the courtroom for the Power Point presentations.

A: Yes.

Q: And you know that to be one that existed in the basement and belonged to Brad Heyka?

A: Correct.

Q: Now, at that time, when these individuals... when he was coming up the steps, did you have any discussion with him at that time?

A: At some point, I remember them cleaning, wiping down, I don't remember when that was.

Q: And do you... can you at any time later recollect if they were using any cleaning products?

A: Yeah, like you could hear the squeeze thing.

Q: Okay, you know there was some cleaning product being used, what brand you're not...

A: Correct.

Q: And what area were they cleaning, if you know?

A: I think they were cleaning the west bathroom... I'm not sure, I don't recall.

Q: All right, but you were not... you were hearing what was going on, is that correct?

A: Yes, but I also remember seeing them... its kinda jumbled, I just remember them wiping stuff.

Q: All right, and specific items you don't have a recollection of today, is that correct?

A: Correct.

Q: Do you know how long they might have spent cleaning?

A: No.

Q: And do you know if they were together doing this?

A: I don't recall.

Q: But you do recall being in the hall area, the west hall area, and the... by the west bathroom, at a time when... after the sexual assault had occurred in the west hall bathroom.

A: Correct.

Q: Can you tell us what happened at that point in time, relative to all the people in the residence?

A: Heather and I were taken to the garage, placed in the trunk of Aaron's car, and as we were getting in the guys were brought out to the garage. I can remember Jason was in front and he didn't have any clothes on. And they were trying to put the guys in the trunk. Obviously we weren't all going to fit in there. Jason helped me get out of the trunk, Heather and I both got out of the trunk and were put into the back seat of Aaron's car. And the guys were put in the trunk, and it was shot...shut, and then I can remember Heather looked at me and said "I wonder how long they can survive in a trunk?" And then I got out of Aaron's car, and like the garage door was opened, and I was told to go get into Jason's truck, on the passenger side. And then they were having some discussion. The taller, skinnier one was driving Aaron's car, while the stockier one was coming towards the truck with me, and they had... the skinnier one said something to the effect of "If she gives you any trouble let me know and we'll take care of that." And then I got into Jason's truck, Intruder #2 got into Jason's truck, we pulled out, waited, Aaron's car got in front of us, and we followed them out to the field.

Q: At the time that you were required to go into the garage, did you proceed down that west hallway through the door?

A: Yes.

Q: And were you clothed at that time?

A: I had on a sweater.

Q: And were there any other items of clothing on heather?

A: She had on a sweater or a shirt, I think it was white.

Q: And when the two of you were directed, this was to the Honda Civic that belonged to Aaron, is that correct?

A: Correct.

Q: And when the truck was opened, were you and Heather both able to fit in that trunk area?

A: Yes.

Q: And your height... how tall are you?

A: 5'4.

Q: Was Heather taller or shorter than you?

A: Taller.

Q: And in size, a medium build person?

A: Myself?

Q: Yes.

A: Yes.

Q: And Heather, description?

A: She was taller and thinner.

Q: And the other gentlemen coming out the house were going to be required to get in the trunk as well.

A: Yes.

Q: How tall was Jason?

A: Six foot.

Q: And do you know what he weighed?

A: 175, 180.

Q: And in relation to him, how tall was brad?

A: he was taller, I think he was 6'3.

Q: And do you know how much he weighed?

A: A little bit more.

Q: Than Jason.

A: Yes.

Q: And then Aaron, in relation to Jason and Brad?

A: I think he was just a little bit shorter than Jason, but not by much.

Q: And his build?

A: About the same.

Q: So these three individuals with their size and weight were placed into the trunk of the Honda Civic, and the trunk was closed upon them, is that correct?

A: Correct.

Q: At the time when everyone was being moved into the car and out of the truck, do you recall where or whether there were any lights in the garage>

A: There was a light on, I can remember watching Jason walk into the garage.

Q: And do you recall whether or not the door to the garage was open or closed at the time?

A: At the time I think it was closed.

Q: And at some period after the young men had been put into the truck... the Honda, the door to the garage was opened?

A: Correct.

Q: All right, so when you were required to go to Jason's truck, did you leave the home through the garage area?

A: Yes.

Q: And his truck was still parked or in the driveway at that time?

A: Yes.

Q: All right, so that would have been immediately behind Aaron's vehicle, is that right?

A: Correct.

Q: And at that time you indicated that you were required to get in the passenger side.

A: Correct.

Q: And again, opening those doors, do you know whether there was any malfunction of the lighting on the dome up to that point in time?

A: I don't believe so.

Q: And do you know whether or not the floods were still on in that area?

A: I don't know. There's a light in the garage, that you can actually turn on the light, and then a light come on when you open the garage door.

Q: So to the best of your recollection, the area was illuminated.

A: Pretty much. I could see the front of Jason's truck, go get in, and, I mean I could tell that it was the truck and what color and where to go.

Q: Can you recall about the first vehicle, the Honda, driven by #1, his passenger would have been...

A: Heather.

Q: Heather, is that correct?

A: Correct.

Q: And in what location of the car would she have been placed?

A: She was in the back seat when I was with her, but then got into the front seat on the passenger side.

Q: And that vehicle, or the vehicle that you were in backed out of the driveway, is that right?

A: Yes.

Q: And I believe you had indicated that the Honda was allowed to go first, is that correct?

A: Correct.

Q: Leaving the Birchwood address... the street that you live on would be called Birchwood, is that right?

A: Yes. I didn't live there, but yes.

Q: All right, I'm sorry. The street where the house is located was Birchwood.

A: Correct.

Q: And that was the street adjacent to the garage?

A: Correct.

Q: When you went forward, do you remember what direction you were going?

A: We went over to 127th Street, to the east, up 127th Street to 21st, left, over to Greenwich, and then north on Greenwich, under K96, to an area that was kind of deserted.

Q: And during this time, the second intruder was driving that vehicle.

A: Correct.

Q: Did you have an opportunity... let me rephrase that, did he appear in any way to be hiding his appearance at that time?

A: No.

Q: And were you able to see the clock in that car at the time?

A: As we were almost there I looked at the clock and it said 2:07.

Q: That would have been 2:07 in the morning on December the 15th, is that right?

A: Correct.

Q: That would be the year 2000.

A: Correct.

Q: Were there any words spoken by the intruders to you, on the way to 29th and Greenwich?

A: I don't believe so. I don't recall whether or not there were.

Q: Do you recall whether or not you made any inquiries, or said anything to him about the trip that you were undertaking?

A: I think I just... I asked him where we were going. I think he just said we were going somewhere to drop us off away from their cars or away from that area by the house.

Q: And at that point, internally, how did you feel with that response.

A: Scared. I didn't know where we were going. It was one of those things where you see it in the movies and you think that you're headed out to a deserted area because they want to get rid of you.

Q: And is that the way...

THE COURT: Excuse me, is this a good place to take the morning recess?

MS. FOULSTON: It certainly is, Your Honor.

(Recess)

THE COURT: Ms, Foulston, continuing on.

MS. FOULSTON: Thank you, Your Honor.

Q: Miss G*****, we're back after a break, and we had left off talking about being in the garage, and individuals being placed in the trunk of Aaron's Honda, do you recall that testimony?

A: Yes.

Q: before the time when you were supposed to get in that trunk with Heather, were there any items in that trunk that had been removed, that you knew about?

A: I don't recall.

Q: You have stated to us in testimony that as you drove, were driven through the streets of Wichita towards 29th and Greenwich Road, that you were able to identify the time as 2:07 in the morning, correct?

A: Correct.

Q: Did you know whether Jason's clock was correct or approximate?

A: Correct.

Q: When you were in the vehicle, were you free to look at the driver of that truck/

A: I glanced, yes.

Q: Was there any conduct on his part to stop you or alert you not to look at him at that time?

A: No, not at that time.

Q: And can you tell us please, when you proceeded down 29th to Greenwich Road, where did the truck go, the truck and the car go at that time?

A: They went north on Greenwich Road, under K96, and turned into what I believe was like a subdivision, there was a median and there was what appeared to be construction, there weren't any houses around that area.

Q: And were you able to see the basic surrounding area?

A: Yes.

Q: And how did the ground look at that time?

A: It was snowy, it had snowed earlier.

Q: And were there... do you recall whether there were any lights in the area?

A: No.

Q: And at this time, there was no snow falling, is that correct?

A: Correct.

Q: When you arrived at the location, and Aaron's car was going in first, did you notice where that vehicle went, in relation to that median?

A: It turned in the first road, which would be the south side.

Q: Would that be the wrong way to enter that median area?

A: I believe so, yes.

Q: So if the median was in the middle, you're saying the first road was taken rather than the one that would go...

A: Second.

Q: Than the second to go westbound, is that right?

A: Correct.

Q: And when the vehicle pulled in, the Honda, did it come to a point in time when it stopped?

A: It stopped, and we pulled up in the truck next to it, to where I would have been on the north, lined up closest to the Honda.

Q: The vehicles would then be parallel to each other facing west, and you would have been in the passenger side of the truck, and that would have been to the south of Aaron's vehicle, do you recall?

A: Yes.

Q: So if you opened your door, the next door would be Aaron's, and you would be right by the driver's door of Aaron's vehicle?

A: Correct.

Q: When you stopped at that point, do you recall if the car was on or turned off?

A: It was turned off. The person driving got out of Aaron's car, the person driving the truck got out, I got... was sitting there for just a minute. When you open Jason's door, lights come on regardless of whether the car is on or not, or the engine, or the ignition. And it was still on when the door was shut, because it doesn't shut when the door is shut. There's like a time... I mean it gives you a few minutes before it shuts off. And then the driver's side door opened again, and they were hitting the light trying to get it to turn off, because they didn't want it on and I'm assuming they didn't know it was automatic, it did it on its own. And then I got into Aaron's car

on the driver's side. Heather was in the passenger side. And the guys were brought out of the trunk. And they kneeled in front of the car, at which time I turned to Heather and said 'Oh my God, they're going to shoot us!' And then we got out of the car at about the same time, and then she went over to where Aaron was and I went down to where Jason was.

Q: When you said that you left the Dakota, were you instructed to do so?

A: Somehow, yes.

Q: And so, it wasn't your voluntary act to move yourself from that location to the other car is that correct?

A: Correct.

Q: And Heather was to the passenger side in that same vehicle?

A: Correct.

Q: Now if I recall your testimony, Aaron and Jason and Brad had all been confined in the trunk of that vehicle?

A: Correct.

Q: Was there some action that was taken to remove them from the truck, if you know?

A: I don't know.

Q: You did see them come out?

A: They were brought around to the front of the car, but I had my, the door shut, I don't know what words were said.

Q: And when they were brought, were you able observe both #1 and #2 intruders?

A: Yes.

Q: And at that time, were you then letting yourself out of the vehicle, or were you taken from the vehicle?

A: There was a lot of motioning and directions given to indicate to Heather and I both that we were to get out of the car. I don't recall... I don't know if they opened the door and we got out, or if I opened that door.

Q: And what did you know in your heart at that time?

A: That they were going to shoot us.

Q: When you looked in front of the vehicle, were you able to see Aaron, and Brad and Jason?

A: Yes, because I went and sat next to where Jason... kneeled next to where Jason was.

Q: And when you say that they were kneeled, can you tell me which direction they were facing?

A: They were facing west.

Q: And that would put your view to the back of their heads, is that correct?

A: Correct?

Q: Were the two intruders in that immediate area?

A: Yes.

Q: Were they placed fairly close together?

A: Yeah.

Q: When you exited the vehicle, who was immediately in front of you, on the driver's side, in front of the Honda?

A: It was Jason, and then Brad, and then, Aaron...

Q: And Heather?

A: To the north.

Q: To the north. When Heather exited the vehicle, take a place on the opposite side of where you were?

A: Yes. She went up and kneeled by Aaron.

Q: Can you tell us what happened next?

A: I was kneeling, there was a shot, and I don't remember... We were all screaming, but I remember hearing Aaron say "Please, no!" He used the word "sir." There was another shot, and another one, and another one, and then everything just kinda went grey as I was shot.

Q: At that time, Miss G****, had you felt the impact of any foreign object?

A: I felt an impact at the back of my head, but didn't actually fall forward.

Q: So you remained in a kneeling position, is that correct/

A: Correct.

Q: And you've indicated everything went grey. Can you explain that?

A: Just kind of... you can see stars, and what... what they look like illustrated in a cartoon when someone gets bonked on the head and they just kinda see stars... or when you shut your eyes and you can see little points of light.

Q: And you were still remaining upright on your knees.

A: Correct.

Q: Then what happened?

A: I was kicked over, where I fell forward. I heard some talking, and I heard car doors shut to my left, which would have been south, which led me to believe into Jason's car... or truck. The engine started. I heard them accelerate forward. I felt an impact. They kept going. I heard it stop. It had gone in front of me, and sounded (inaudible). I didn't know if they were coming back to run over me, or run over me again, or to run over everyone else. And then I heard it go forward and leave.

Q: At this time, what did you determine that you should do?

A: After the truck left, I waited until I couldn't hear it any longer, turned my head to see where it had gone, watched it go south on Greenwich, waited until I couldn't see any headlights any longer. I got up, and I started checking to see if anybody else was still alive. I went to Jason, I rolled him over. He had blood coming out of one of his eyes. I had still had on my sweater, and I took it off, and tied it around his head to act as a tourniquet to try and stop it. And then I went over to Brad to see if he was still alive, and at that point, at Aaron and Heather, had decided that I needed to go get help. I opened Aaron's car door and rummaged around for keys or a cell phone, or something, to see if I could use that. There wasn't anything in there. I started looking around the area, to see where I could go. There were some lights off to the west, that looked like they were an airport, and there probably wasn't anybody there at that time. I didn't go there, and I saw a house to the southwest that had some white Christmas lights on it, and decided that I was going to go that way, and I just started running.

Q: Your determination was to run to the area where the Christmas lights had been located?

A: Correct.

Q: And were you able to judge at all the distance that stood between you and those lights?

A: I know it was south of K96 because there were some cars, but I don't know how far that was.

Q: When you took off in that direction, can you tell us the direction you went and what you encountered as you attempted to get to that house.

A: A remember running through a field. There were several fences, that I climbed. I crossed K96. There were no cars coming from either direction on K96, and as I crossed it, went down

some kind of path, behind a residential area. And as I was going, I could see cars heading back to the direction where I came from. And so I started running faster, thinking they were coming back, and not knowing where those roads went, I didn't know if they could see me. I just started to run up to the back of the house, and I went around the side of the house to the front, and I started ringing the doorbell.

Q: What was the condition of the field, as you ran across to the house to the south of you?

A: Snowy. There was a lot of snow. I can remember as I was running, I think there were three different cars that were going north on Greenwich, and I was kind of "hit the deck," and tried to get down as low as I could so as not to be seen.

A: Now Miss G*****, you told us you were running in that direction, at that time you were... remained unclothed, is that correct?

A: Correct.

Q: And you had no footwear on, did you?

A: No.

Q: In your life, and prior to that time, had you ever engaged in the sport of running or walking?

A: I run and walk to stay in shape.

Q: And when you run, what type of distances do you run?

A: I usually run anywhere from a mile and a half to two, two and a half miles.

Q: And do you know how long it takes you, under normal conditions, to run a mile?

A: I average between a 10 and a half to eleven minute mile.

Q: When you walk a mile,, do you have an average time that it takes you for that?

A: Anywhere from 14, 15 minutes.

Q: On this occasion, on the early morning hours of December 15, were you running as fast as you could?

A: Yeah, I was running, and then at one point, I stopped for just a minute, because I didn't think I could continue. Gave myself a little pep talk, said I need to keep running, and I continued.

Q: At this time of the early morning, did you notice any home life that particularly got your attention?

A: Just the house with the Christmas lights. I was actually running to that but came upon a street before you actually get to that house. I came upon the back of a, a white house and just decided to go to that house.

Q: Tell us what you did at the time that you reached that home.

A: I began ringing... ringing the doorbell, knocking on the door, looking in to see if anyone was there, until some man answered the door.

Q: And do you now know that address to be one at Regency lakes?

A: Yes, I do.

Q: The individual who responded to you, do you know his name to now be Steve Johnson?

A: Yes.

Q: Was he with anyone in his home, on that occasion?

A: A female... his wife, girlfriend, I'm not sure what she is.

Q: What, if anything, did you say to them?

A: Upon Mr. Johnson opening the door, I just started spilling out everything that had happened, asked them to call 911, asked them for a blanket, started telling them what had happened that

night, where everybody was located. That we had been shot, that I was afraid that I wasn't going to live and please tell this to whoever comes to your house.

Q: Did Mr. Johnson take any action to assist you?

A: He called 911.

Q: The woman who was with him, did she in any way assist you?

A: I think while he was calling 911, she was getting blankets.. I was sitting on a chair at their... I don't know if it's a kitchen table or a dining room table, after I had walked through their living room.

Q: Were you able to obtain some assistance for warmth?

A: One of them handed me some blankets.

Q: Did that help at all?

A: Not a lot.

Q: What was the condition of your body at that time?

A: I was shaking. I was cold. I was tired and bleeding.

Q: Were you aware and alert at that time, when you were giving the information to Mr. Johnson?

A: Yes.

Q: Were there periods of time when you felt that you wouldn't be able to stay awake, or stay with it?

A: There was one point in time where I can remember him telling me to stay awake and to hang on, that the ambulance was coming. But there was never a point where I passed out.

Q: And during this time, did you have the opportunity to speak to someone at 911?

A: He originally called 911, and then was trying to relay to me what the operator was saying, I was trying to try to relay to him what my answer was. I finally... he just handed me the phone and said and said you talk to them. And then I talked to the 911 operator and began telling her what had happened, where everyone was located. There was some confusion, she kept asking me about Birchwood, I kept saying that's not where you need to go, that's not where my friends are right now. I was just concerned about getting an ambulance to that location.

Q: Did you also receive medical care that evening at the Regency Lakes home?

A: The EMS people arrived, and I was taken out on a gurney, and I'm not sure what they did besides wrap me in blankets.

Q: Do you know where you were taken by that ambulance, to what hospital?

A: Wesley.

Q: And when you got to Wesley, what action did they take, do you recall?

A: I remember talking to Lisa. She was... she identified herself in the ambulance on the way to Westlake. I asked her if the ambulance had made it to the field. I remember hearing on the radio in the ambulance some discussion between some people on that radio in regards to what they found.

Q: And on your way to the hospital you were aware that they had located the scene where your friends were laying?

A: Correct.

Q: When you proceeded to the hospital, were you treated by medical personnel?

A: I believe so, I can remember doctors running around. I can remember talking to people from law enforcement. And then the next clear thing I remember is being put into the CAT scan. They were having a hard time giving it to me, because I was shaking, and they were telling me to stop

shaking, and I was telling them that I couldn't. And then after that I don't remember anything until I woke up in my room.

Q: Miss G****, were you told anything about the injury that you received to your head?

A: Not until the next morning, I think.

Q: So you later came to find out the extent of your injuries?

A: Yes. I knew that I had been shot.

Q: So, you knew that you had been shot, is that correct?

A: Correct.

Q: On the 14th of December, when you had gone to Jason's house, do you recall how you were wearing your hair?

A: It was down. I had... when I washed my face, to go to bed, I had clipped it back.

Q: And what kind of clips did you normally use on your hair?

A: They were just little tiny plastic clips. I didn't clip it up like it is now, I just clipped half my hair.

Q: So your hair is up totally at the point, is that correct?

A: Correct.

Q: Your hair is to your shoulders. Was it that length approximately at that time?

A: It was a little bit shorter.

Q: And did you take the sides of it to place into some type of clip in the back?

A: Yes.

Q: And where would the clip have been? Could you turn and point to the area where the clip had been?

A: It would have been basically right under this poof.

Q: You have a little clip under there today, don't you?

A: Yes?

Q: And so you're pointing toward the mid region, toward the top of your head, is that correct?

A: Yes.

Q: For identification purposes, I'm going to show you what's been marked as State's Exhibit #214, and ask if you can identify these items.

A: They're three out of, three clippings out of four that I had.

Q: And are those your personal clips?

A: Yes.

Q: And did you bring those from your home to demonstrate what they looked like?

A: Yes.

Q: When you purchased them, how many were there?

A: Four.

Q: And what was the color of the fourth one?

A: White.

Q: The colors in that bag would be what?

A: Red, silver, and Navy.

Q: I'm going to hand you what's been marked for identification purposes as State's Exhibit #46, and ask if you can identify the fragments that are contained in this exhibit. Can you identify these two pieces?

A: They are part of the white clip that I had in my hair.

Q: And are those the same clips as #219, as having come from that set?

A: Yes.

Q: I'm going to show you what's been marked as State's exhibit #205, and that contains a number of little fragments. Can you tell me what those are?

A: It looks like additional pieces to my white clipping.

Q: Thank you.

(Exhibits entered into evidence)

Q: Miss G****, since the incident in December 2000, have you had an opportunity to listen to the tape recording from 911 that has your voice on it, regarding these incidents?

A: I heard it yesterday.

Q: I'm going to hand you a transcript of that particular statement that is now in evidence, and I'm going to ask you to turn to... what would be the fourth page. Its not marked, but at the bottom of the fourth page, it has a number stamped, 8567. Do you see that?

A: Yes.

Q: And can you read in there the description of a vehicle that you gave to the 911 operator on that occasion?

A: It says "They took off in the, what color of Dakota?"

Q: Did you respond?

A: I said "A 2000 Dodge Dakota." The dispatcher said "2000 Dodge Dakota, what color?" It says "background inaudible." I'm assuming this is Mr. Johnson... says "Champagne. Silver." I said, in the background, "Honda Accord, two door." He repeated "In a silver Honda Accord.." There was more background that was then inaudible. Said "Two door." There was more background... said "Do you have an ambulance on the way..."

Q: Okay, I'm going to stop you there. So at this time, you had told us that some of the communication you relayed to Mr. Johnson, and he relayed to 911, is that correct?

A: Yes.

Q: And you would have given them the description of a 2000 Dodge Dakota belonging to Jason Befort?

A: Correct.

Q: And you would have given them the description of the colors as being...

A: Champagne or silver.

Q: Silver. Did there come a time when you alerted officers that you... they may have been given incorrect information about that truck?

A: While I was in the hospital, Detective Otis was there, asking me some questions, and I heard someone say "a Dodge Durango," and I told him that isn't what they're looking for, that it was a Dodge Dakota, which is a truck, not a SUV.

Q: Okay. Would you turn to page... the next page, 8568, and in the middle of this... at this point, where it begins with the statement "Do you know how..." can you describe the suspect to them. And was there a point in time when you were actually put on the phone to give the description?

A: Yes.

Q: All right. And was it at this point in time?

A: Just a little bit... a few more lines down.

Q: All right. So you were still relaying information to Mr. Johnson, you would be then having him relay it to 911.

A: Correct.

Q: And there are some indications of the letter M is male, or F is female, and would those be your statements to Mr. Johnson, from the background?

A: Yes.

Q: And can you tell us how you described Intruder #1/

A: I said "One is tall and skinny, and he had hair like Buckwheat, and he had an orange and black FUBU sweater. And the other one had on..." The dispatcher interrupted me, and says "Okay, ma'am, when you said he was tall, how tall was he?" I said "Probably about six foot tall." Dispatcher said "Okay, how old did he look?" I said "He, they're young, they're 20's, early 20's." Dispatcher said "Okay, was he small, medium, heavy build?" I said "No, he was thin" ... there's a parenthesis for "inaudible"... "tall, he was really lanky, real thin. Said, "Okay, what was he wearing?" "The orange and black FUBU sweater, and he had on like (inaudible) black jean-type things." And then I asked for another blanket.

Q: Okay, let me stop you here. You've described for the court, the jury, and also the 911 dispatcher the fact that you observed a certain type of sweater that was worn by Intruder #1 on the evening of December 14, to the early morning hours of December 15, 2000. I'm going to show you what's been marked for exhibit as State's Exhibit #55, and ask if you can identify this item.

A: That's the orange and black FUBU sweater that I saw on the intruder, Intruder #1.

Q: And does it look in substantially the same condition that it did when you first saw it?

A: Yes.

Q: The words across the front... did you, or had you recognized that as a brand?

A: Yeah, I don't own any FUBU things, but I have seen them.

Q: I believe you described an orange and black sweater. Did you give more detail as to how the orange and black was contained in the sweater?

A: In the 911 report?

Q: At any time.

A: I had described it as not plaid, not checkered, just kinda interwoven. I think there's a name for it, but I'm not sure what it's ... like when a thread kinda continues, goes from one color to the next.

Q: And does that, in your estimation, meet the description that you gave?

A: Yes, it does.

(Exhibit entered into evidence)

Q: And can you relay the information that you were... that you said and the questions that were asked of you?

A: The dispatcher said "Okay" after I had described the sweater. I asked if I could have another blanket. The dispatcher said "Okay." I said "The other one, I never saw him. He kept his body covered..."

Q: Let me stop you for a second. Now, at the time that you were responding with this information, do you recall what had previously been asked of you regarding that first intruder?

A: She was asking about specific clothing, how tall he was, and I was trying to explain that as far as his clothing and what he had on under his coat, he had kept his coat on the whole time. I

didn't remember what was under it, and I didn't see his build as well, except for the fact that he was larger.

Q: Larger as in stockier, correct?

A: Yes.

Q: Then the dispatcher inquired if the second person was black as well, and what did you reply?

A: I said "Yes." She said "Okay." I said, "I've been raped, can you..."

Q: I'm going to stop you for just a second. I'm going to turn your attention to page 8970 and the third line down. The dispatcher inquires "Okay ma'am, the second suspect." Do you see that line?

A: Yes.

Q: And what did you state at that time?

A: I said "I can't describe him, he's heavier build." The dispatcher says "Okay, how tall was he?" And I said "Black, he was probably six foot tall also." She repeats... dispatcher said "What was he wearing?" I said "A black leather coat, I don't know what else." And then she asked me how many people were hurt.

Q: With regard to that particular information you were giving to the dispatcher, do you recall what that was in relation to?

A: It was the second suspect, describing his build, and that I knew he had on a black leather coat, but I wasn't sure what was underneath that.

Q: Did there come a time when you met an individual named Timothy Ralph?

A: Yes.

Q: And do you know what his position, job would be/

A: He is a detective with the Homicide Department.

Q: And do you recall if you had an occasion to talk with him from your hospital bed, on December 15th at around 6:30 that evening?

A: I had talked to him, a couple of different times. He had come in, shown me some photos of some things to identify, and then had also brought in some photo lineups.

Q: Now, the photographs of the things that he wanted you to identify, did that include property of some kind?

A: Yes.

Q: And was there anything else other than the property that you were shown photographs of?

A: Yes.

Q: Other than the, the photographs...

A: Yes.

Q: All right, what else do you recall?

A: There were to different pieces of paper. Each had several photos on it, and he asked me if I could identify any of the people in the pictures as my intruders.

Q: And did you have an opportunity to take a look at those pictures?

A: Yes.

Q: And did you make any determinations in regard to each piece of paper?

A: I did.

Q: I'm going to place before you what's been marked for identification purposes as... State's Exhibit #714., and ask you if you can identify this document.

A: This one of the two lineups that Detective Ralph had shown me.

Q: And how are you able to identify that, does your name appear on it?

A: My signature's on it, and I had written under the Comments section "I think it's #2.

Q: Now, on that same occasion, you indicated you received a second, similar document, is that correct?

A: Correct

Q: And I'm going to show you what's been marked for identification purposes as #715, and can you see that document?

A: Its also a lineup with my signature and comments on it.

Q: Do you recall which one of those you looked at first?

A: I do not.

Q: And since the hospital stay in December, have you seen these photos?

A: Yes I have.

Q: Now look at State's Exhibit #714. can you describe... whether the photos are in color or black and white?

A: They're in black and white.

Q: And did you observe them on that occasion in black and white, as you see them here today?

A: Yes, I did.

Q: When you look at #714, you indicated a response to identification of one of the individuals, is that correct?

A: Correct.

Q: Can you tell me how you went about reviewing that particular document?

A: I looked at it. Detective Ralph gave it to me, I looked at the pictures, and he asked me if I could identify any of the people the pictures. I said "I think it's #2." He asked why. I thought that my response to him was "His eyes." And I just recognized him by his features, his hair, his eyes, and then I wrote in the comment section "I think it's #2."

Q: Now these photographs would be in black and white, is that correct?

A: That's correct.

Q: Let me show you what's been marked for identification purposes as State's Exhibit #209, and ask you to take a look at that photograph.

A: It is a color version of suspect #2.

Q: And is it larger than the one that you're seeing in Exhibit #714?

A: Yes.

Q: And the difference as well is that its color vs. the black and white paper?

A: Yes.

Q: And you were not shown a color photograph on that date?

A: No.

Q: You were not shown anything of that size?

A: No.

Q: Were you suggested to pick any individual in that particular array?

A: No.

Q: Did Detective Ralph give you any information to lead you to choose anyone in particular in that array?

A: No.

Q: At the time... when you went through that photo array, and after you had chosen #2, did Detective Ralph indicate to you in any manner whether or not your choice was correct or incorrect?

A: No.

Q: So when you signed that and released it to him, did you have any idea who you might have chosen?

A: No.

Q: And had you had an opportunity... During this time, you were hospitalized?

A: Yes.

Q: And you were suffering the effects of a gunshot wound to the head.

A: Yes.

Q: Do you believe you were still alert and aware enough to make the choice in that picture?

A: Yes.

Q: At the time of the preliminary hearing, were you brought into a courtroom where these two individuals were located?

A: Yes.

Q: And at the time, were you able to identify the second intruder into the home?

A: No, I was not.

Q: Can you tell me why?

A: I identified in preliminary hearing the taller of the two individuals, Intruder #1. The second person in the courtroom had shaven his head, and also intermittently had glasses.

Q: Do you see that person in the courtroom today/

A: Yes, that's him.

Q: Record should reflect that the witness has identified... let's get a better description. Can you tell me what he's wearing, and who he's seated next to?

A: He has on a plaid shirt, shaved head, glasses, (inaudible) the shirt, under the plaid shirt, sitting in between counsel with (inaudible) glasses and with (inaudible) glasses.

Q: For the record, the witness has identified Reginald Carr.

(Exhibits admitted into evidence)

Q: Miss G****, as we have talked, through this trial and your testimony, there is a period of approximately three hours' time that we have discussed, of the events of December 14 to the early morning hours of December 15 2000. Would that be a fair statement?

A: Yes.

Q: And during that period of time, do you, or can you, tell us about your observations of the individual, Reginald Carr, that you have identified in Exhibit #714, and what aided you in making that identification?

A: There were several points in the night, even though instructed not to look, or to keep your head down, where you could still glance, peek, at the people who had intruded. There was point where I was taken to the ATM by him, he came up the stairs while I was sitting, there was a point when he sexually assaulted me, I was in the car with him on the way to the soccer field,

just numerous different times. When we got out, and were back on the way in the house after I was taken to the ATM. Several times.

Q: I place before you what's been marked for identification purposes as State's Exhibit #715, second photo array. Do you see (inaudible).

A: Yes.

Q: And can you tell me, was that another one of the papers that Detective Ralph gave to you, to be able to visit with you about people that might be depicted in that photo array?

A: Yes, it was.

Q: And were you able to choose anyone in that photo array?

A: I had written #1, "I think it's #1."

Q: And upon what basis did you make that statement?

A: Just some recognition of, of that person. He had similar hair as to what I remembered.

Q: Now, when you talked about the hairdo of Intruder #1, can you tell me how you could best describe it today, to someone who had never seen a picture, or had never seen that person?

A: I had described it as a Buckwheat hairdo, standing off of the head, but not as in an Afro that was smooth. It was kind of clumped together.

Q: And when you described it in those terms, did you mean it to be derogatory or explanatory?

A: Explanatory.

Q: And the hair, was it... did you note any braids in the hair?

A: No,

Q: So the hairdo was not braided, is that right?

A: Correct.

Q: And were there any rubber bands that you could see in there?

A: No.

Q: So it was just larger clumps of uneven hair that is not an Afro?

A: Correct.

Q: Did it appear to be an unusual hairstyle to you?

A: Somewhat, yes.

Q: And the other... Now, I'm going to... ask you, if you are able... from the evening of December 14 of 2000, or the early morning hours of December 25, until sometime in April, at the time of the preliminary hearing, had you had any personal, in court contact with either of the two defendants?

A: No.

Q: And at the time of the preliminary hearing, were you able to identify an individual at that time?

A: I did.

Q: I'm going to ask you, today in this courtroom, if you can identify the intruder that you have described to the court as Intruder #1. Is he here in the courtroom today?

A: He's sitting in between counsel at the end of the table.

Q: Can you tell me what he is wearing, for the record?

A: A grey shirt, a white shirt under it, also now has glasses, and his hair is braided.

Q: Now, does he look any different than he did on the evening of December 14 of 2000?

A: He looks more like Intruder #2 now, because of his hair and braids that are in it.

Q: So, the characteristics would be those of Reginald Carr...

A: Correct.

Q: As opposed to Jonathan Carr, by his looks today.

A: Correct.

Q: Are you still able to make the identification?

A: It's the same person, yes.

Q: At some point during the time you were hospitalized, do you recall being visited by Detective Robert Chism?

A: Vaguely.

Q: And do you recall any statements that you might have been asked to give to various people during that time that you were in the hospital?

A: I was asked to give a description, identify evidence, asked about some details about what happened.

Q: And during that time, do you recall if you gave any description of weapons that would be different from your testimony today?

A: believe I had initially described both guns as black. My recollection now is that the one that was in between her legs while being sexually assaulted was silver.

Q: Did anyone give you any guidance or direction to make that statement?

A: No.

Q: Do you recall when it was that you first recalled the nature of the silver weapon?

A: I believe it was when Detective Ralph and Detective (inaudible) came to take my videotaped deposition.

Q: And when would that have been?

A: December...30? Several weeks.

Q: And you were at the hospital at that time?

A: No.

Q: On December 30th, you were no longer at that hospital at that time, is that right?

A: Correct.

Q: And were you no longer living in the city at that time?

A: Correct.

Q: And that was taken out of town at your mother's residence, is that right?

A: Correct.

Q: When you had discussed the episode involving your diamond engagement ring, that occurred with Jonathan Carr in the bedroom of Jason's residence, I believe you told us that in some manner the door was opened and Jason was confronted, is that right?

A: Correct.

Q: Do you recall whether or not any weapon was produced at that time?

A: There was point at which Jason, he kind of did, did this, as if...

Q: Flinched.

A: Yes. And said "That's it."

Q: And was that in response to a question that was asked by Mr. Jonathan Carr?

A: He had asked if there was, if there was any more... if this was the only one that he had.

Q: At some point in time, did you during this period when you were at the Birchwood residence, did it come to your attention that Jason had been injured in any other manner, other than the sexual assault?

A: I had noticed some markings on his back, some, some red. I think there was bruised... kind of, bigger markings on his back, like, just, not like all in a row or anything, just. kind of spread out.

Q: Did this appear to be bruises, or a rash, or could you tell?

A: No, they were just kinda impact, just where you could tell something had come in contact, it wasn't like poison ivy or anything, it was just a red marking.

Q: And did you have any idea of how those were caused?

A: No.

Q: And prior to the time that you had had the intruders in your home, when Mr. Carr was there, did you see these bruises or marks on Jason's back?

A: No.

Q: Let me go over some items of evidence with you.

(The witness is shown and asked to identify various items belonging to her and Jason Befort)

Q: I'm going to hand you what has been admitted and marked as State's Exhibit #28, and I'm going to show you this photograph from the scene at 29th and Greenwich. And I'm going to ask you some questions with regard to this. You can take that, turn it over, and take a look at it please. Having had a brief opportunity to look at that photograph, I have the following questions for you. Did the placement of the bodies of Jason, Aaron, Heather, and Brad look any different in this photograph then it did when you left that scene?

A: The sweater that I had left tied around Jason is no longer tied around him.

Q: There is a suggestion in the photograph where Jason is facing upward, is face up. Was this the position you originally found him in, after the shooting had occurred?

A: No, he was face down until I had rolled him over.

Q: So there is shown on this photograph a space between Brad Heyka and where Jason is placed in the photograph, do you recall seeing that?

A: Yes.

Q: That vacant space, was that the space originally occupied by Jason, prior to the time you rolled him over?

A: Yes.

Q: There is also a picture of Brad Heyka and his face is upward as opposed to down. Do you remember seeing that in this photo?

A: Yes.

Q: And can you tell me what... whether or not you might have touched him or changed his position, when you went to check on him?

A: It's a possibility. I had gone over... I remember saying his name, and being directly over him, but I'm not sure whether or not I moved him or not.

Q: But you had moved Jason, and you're not sure whether you moved Brad, but he's shown in a different position, is that correct?

A: Correct.

THE COURT: Is this a good place to stop for the noon recess, Ms. Foulston?

MS. FOULSTON: That would be a good place, Your Honor, thank you.

(Recess)

THE COURT: Members of the jury, continuing on now, the 14th witness, State's Case in Chief. Ms. Foulston.

MS FOULSTON: Thank you, Your Honor.

Q: For the record again, we are back in court after the noon recess, and you are the same Holly G***** that was here earlier testifying, is that right?

A: Correct.

Q: And you understand that you are still under the same oath that you were under when you initially testified in this cause?

A: Yes, I do.

Q: I have one question for you. Did any of the gentlemen living at 12727 Birchwood smoke?

A: No.

Q: Did either you or Heather have cigarettes?

A: No.

Q: Did you see any of the men that evening, Aaron, Jason, Brad, you, or Heather, anyone with a cigarette or cigar?

A: No.

Q: Okay, thank you. State has no further questions, Your Honor.